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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1939

No. 397

UNITED STATES OF AMERICA,

*Appellant,*

*vs.*

THE BORDEN COMPANY, ET AL.,

*Appellees.*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

BRIEF FOR PURE MILK ASSOCIATION, A CORPORATION, DON N.  
GEYER, EDWARD F. COOKE, E. E. HOUGHTBY, F. J. KNOX,  
LOWELL D. ORANGER, AND JOHN P. CASE, APPELLEES.

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## INDEX.

	PAGE
Opinion below .....	1
• Jurisdiction .....	2
Statutes involved .....	4
Questions presented .....	3
Statement .....	5-6
Summary of Argument .....	7-8
Argument:	
I. The Court does not have jurisdiction under the Criminal Appeals Act .....	9
II. The Capper-Volstead Act is a special statute classifying farmers cooperative associations under the power of Congress to classify, to grant exceptions and exemptions to such class, to provide for the procedure to be taken by the Government in regulating restraints of interstate commerce and such act is entitled to preference over the general statute, namely, Section 1 of the Sherman Anti-Trust Act .....	10-25
III. Pure Milk Association is composed of producer members incorporated under the Agricultural Cooperative Act of Illinois, without capital stock upon a not for profit basis, and its method of operation meets the requirements of the Capper-Volstead Act, under Section 2 of which a complete remedy as against these Appellees is provided for relief from the things complained of in this indictment .....	26-66

Conclusion .....	66-67
Appendix A .....	69
Appendix B .....	70
Appendix C .....	71-73
Appendix D .....	74
Appendix E .....	75-76
Appendix F .....	77-78
Appendix G .....	79-83
Appendix H .....	84

# TABLE OF CASES.

\* Star indicates Footnote.

Addyston Pipe & Steel Company v. United States, 175 U. S. 211 .....	21
Aero, etc. Transit Company v. Georgia Public Service Commission, 295 U. S. 285, 289-291 .....	47
American Column Lumber Co. v. United States, 257 U. S. 377 .....	24
American Sugar Refining Co. v. Louisiana, 179 U. S. 89 .....	47
Arkansas Cotton Growers' Coop. Assn. v. Brown, 168 Ark. 504 .....	35, 46
Baltimore Nat. Bank v. State Tax Commission of Maryland, 297 U. S. 209 .....	11
Barns v. Dairymen's League Coop. Assn., Inc., 220 App. Div. 624, 222 N. Y. Supp. 294 .....	45
Bedford Company v. Stonecutters Assn., 274 U. S. 37, 58 .....	38, 39
Binderup v. Pathe Exchange, 263 U. S. 291 .....	24
Board of Trade of Chicago v. Olsen, 262 U. S. 1 .....	50

Brown v. Staple Cotton Growers Coop. Assn., 132 Miss. 859, 96 So. 649 .....	44
Brushaber v. Union Pacific R. R. Co., 240 U. S. 1 21 .....	50-51
Clear Lake Coop. Livestock Assn. v. Weir, 200 Ia. 1293, 206 N. W. 297 .....	45
Currin v. Wallace, No. 275, 59 S. Ct. 379 .....	50
Dark Tobacco Growers Coop. Assn. v. Dunn, 150 Tenn. 614, 266 S. W. 308 .....	35, 44
Dark Tobacco Growers Coop. Assn. v. Robertson, 84 Ind. App. 51, 150 N. W. 106 .....	45
Duplex Printing Press Company v. Deering, et al., 254 U. S. 443 .....	23, 38
Eastern States Dealer's Lumber Assn. v. United States, 234 U. S. 600 .....	23
Flint v. Stone Tracy Company, 220 U. S. 107, 173 ..	50
Trost v. Corporation Commission, 278 U. S. 515 ....	43
Gompers v. Buck's Stove & Range Co., 221 U. S. 418	21
Greater New York Live Poultry Chamber of Com- merce v. United States, 47 F. (2d) 156 .....	19
Harrell v. Cane Growers Coop., 160 Ga. 30, 126 S. E. 531 .....	45
Helvering v. City Bank Farmers' Trust Co., 296 U. S. 85 .....	54
Hollingsworth v. Texas Hay Assn. (Tex. Civ. App. 1922) 246 S. W. 1068 .....	45
International Harvester Company v. Missouri, 234 U. S. 199 .....	47
Kansas Wheat Growers v. Schulte, 113 Kan. 672, 216 P. 311 .....	44
LaBelle Iron Works v. United States, 256 U. S. 377 ..	51

Lawlor v. Loewe, 235 U. S. 522 .....	23
Liberty Warehouse Co. v. Burley Tobacco Growers' Coop. Marketing Assn., 276 U. S. 71 .....	34, 45, 48, 49
List v. Burley Tobacco Growers' Coop. Assn., 114 Ohio St. 361, 151 N. E. 471, 474 .....	42, 43, 45
Live Poultry Dealers' Protective Assn. v. United States, 4 F. (2d) 840 .....	20
Local 167 v. United States, 291 U. S. 293 .....	25
Loewe v. Lawlor, 208 U. S. 274 .....	21, 38
Manchester Dairy System v. Hayward, 83 New Hamp. 193, 132 Atl. 12 .....	35, 45
Marketing Association of Fort Wayne, Inc., In re, 8 F. (2d) 626 .....	50
Milk Producer's Marketing Co. v. Bell, 234 Ill. App. 222 .....	45
Minnesota Wheat Growers' Coop. Marketing Assn. v. Huggins, 162 Minn. 471, 203 N. W. 420 .....	44
Nash v. United States, 229 U. S. 373 .....	18
Nebraska Wheat Growers v. Norquist, 113 Nebr. 731, 204 N. W. 798 .....	45
Northern Wisconsin Cooperative Tobacco Pool v. Dekkedal, 182 Wis. 571, 197 N. W. 936 .....	35, 44, 46
Oregon Growers Coop. Assn. v. Lentz, 107 Ore. 561, 212 P. 811 .....	45
Potter v. Dark Tobacco Growers' Coop. Assn., 201 Ky. 441, 257 S. W. 33 .....	35, 36, 45
Poultry Producers v. Darlow, 189 Cal. 278, 208 P. 193 .....	45
Price v. United States, 74 F. (2d) 120 .....	11
Quong Wing v. Kirkendall, 223 U. S. 59, 62 .....	50
South Carolina Cotton Growers v. English, 135 S. C. 9, 133 S. E. 542 .....	45

Standard Oil Company of New Jersey v. United States, 221 U. S. 1 .....	21
Standard Sanitary Mfg. Co. v. United States, 226 U. S. 20 .....	22
Stark County Milk Producers Assn. v. Tabeling, etc., 129 Ohio St. 159, 194 N. E. 16 .....	45
Stewart Machine Company v. Davis, 301 U. S. 548, 584 .....	51
Sugar Institute, Inc., et al. v. United States, 297 U. S. 553 .....	19
Swift & Company v. United States, 196 U. S. 375 ..	18
Terminal Warehouse Company v. Pennsylvania R. R. Co., et al., 297 U. S. 500, 514 .....	15
Tobacco Growers' Coop. Assn. v. Jones, 185 N. C. 265, 117 S. E. 174 .....	35, 44, 46
Twin City Pipe Line v. Harding Glass Company, 283 U. S. 353 .....	38
United States v. American Linseed Oil Company, 262 U. S. 371 .....	24
United States v. American Tobacco Company, 221 U. S. 106 .....	21
United States v. Brims, 272 U. S. 549 .....	24
United States v. Colgate & Company, 250 U. S. 300 ..	13
United States v. Corn Products Refining Company, et al., 234 F. 964 .....	18, 19
United States v. Hastings, 296 U. S. 188, 192-194 ....	13
United States v. Hess, 71 F. (2d) 178 .....	11
United States v. Joint Traffic Assn., 171 U. S. 505 ..	40, 42
United States v. King, 229 F. 275 .....	18, 19
United States v. King, 250 F. 908 .....	18, 19
United States v. Kissel, 218 U. S. 601 .....	18, 19

United States v. Pacific & Arctic Railway Co., 228 U. S. 87 .....	40, 41
United States v. Patten, 226 U. S. 525 .....	22
United States v. M. Piowatty & Sons, et al., 251 F. 375 .....	18, 19
United States v. Reading Company, 253 U. S. 26 ....	23
United States v. Rock Royal Coop. Inc., et al., Nos. 771, 826-828, 59 S. Ct. 993 .....	51
United States v. Swift & Company, et al., 188 F. 92 ..	18, 19
United States v. Trans-Missouri Freight Assn., 166 U. S. 290, 340 .....	38, 40, 42
United States v. Trenton Potteries, 273 U. S. 392 ..	25
United States v. Union Pacific R. R. Co., 226 U. S. 61 .....	22, 40
United States v. Whiting, et al., 212 F. 466 .....	18, 19
United States Navigation Company, Inc. v. Cunard Steamship Co., Ltd., 284 U. S. 474 .....	14
Warren v. Alabama Farm Bureau Cotton Assn., 213 Ala. 61, 104 So. 264 .....	35, 45
Washington Cranberry Assn. v. Moore, 117 Wash. 430, 201 P. 773 .....	45

#### STATUTES CITED.

Agricultural Adjustment Act of 1933, 48 Stat. 31, 7 U. S. C. A. 601 (Appendix F) .....	3, 4, 26, 28, 66
Agricultural Cooperative Act of Illinois, Ill. Rev. Stat. 1939, ch. 32, sec. 440 .....	6, 26, 33, 66
Agricultural Agreement Act of 1937, 50 Stat. 246, 7 U. S. C. A. 601 (Appendix G) .....	3, 4, 26, 29, 49, 51, 66
Agricultural Marketing Act, 46 Stat. 11, (Appendix E) 12 U. S. C. A. 1141 .....	3, 4, 26, 27, 33, 49

Capper-Volstead Act, 42 Stat. 388, 7 U. S. C. A. 291 (Appendix C).....	
.....3, 4, 10, 12, 13-18, 20, 24, 26, 27, 30, 42, 49, 50-55, 66	
Clayton Act, 38 Stat. 730, 15 U. S. C. A. 17 (Appendix B) .....	3, 4, 19, 20, 23, 26, 27, 32, 39, 40, 41, 48, 66
Commodity Exchange Act, 49 Stat. 1491, 7 U. S. C. A. 7 .....	49
Cooperative Marketing Act, 44 Stat. 803, 7 U. S. C. A. 455 (Appendix D) .....	3, 4, 26, 66
Criminal Appeals Act, 34 Stat. 1246, 18 U. S. C. A. 682 .....	2
Federal Bankruptcy Acts .....	50
Federal Revenue Acts .....	50
Federal Shipping Act .....	14, 15, 41
Grain Futures Act .....	48, 50
Interstate Commerce Act, 52 Stat. 1236, 49 U. S. C. A. 301 .....	14, 40, 41
McKinley Tariff Act of 1926, 44 Stat. 91, 26 U. S. C. A. 755 L- .....	49
Robinson-Patman Act, 49 Stat. 1526, 15 U. S. C. A. 13 a (Appendix. H) .....	3, 4, 26, 29, 49
Sherman Act of July 2, 1890, 50 Stat. 693, 15 U. S. C. A. 1 (Appendix A).....	
.....3-7, 9-13, 16-20, 30-33, 38-40, 42, 43, 51, 55, 59, 63-66	
War Finance Corporation Act .....	48

#### MISCELLANEOUS.

Opinions of Attorneys General, Vol. 36, p. 326.....	37
59 Cong. Rec., Part VIII; page 8041 .....	54
60 Cong. Rec., Part I:	
Page 377 .....	54
Page 571 .....	55

## 61 Cong. Rec., Part I:

Page 1034 .....	62
Page 1039 .....	60, 61
Page 1043 .....	62

## 62 Cong. Rec., Part II:

Page 2049 .....	56
Page 2107 .....	56
Page 2122 .....	57

## 62 Cong. Rec., Part III:

Page 2160 .....	65
Page 2171 .....	58
Page 2172 .....	58
Page 2216 .....	66
Page 2266 .....	59
Page 2279 .....	59

H. R. 2373 ..... 63

H. R. 2373, Sen. Comm. on Judiciary on Sen. Bill 4344 ..... 63

H. R. 2373, Sen. Amendment, failed to pass ..... 66

H. R. 7783 (66th Cong., 1st Sess.) ..... 54

H. R. 13931 (66th Cong., 2d Sess., 1920) ..... 54, 55, 63

H. R. 13931, Sen. Amendments ..... 54

Hearing before Subcommittee of Sen. Comm. on Judiciary (66th Cong., 2d Sess., page 28) ..... 63, 64

Sen. Bill 4344 (66th Cong., 2d Sess.) ..... 55

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OPINION BELOW.

The District Court filed an opinion sustaining motions to quash and demurrers to the Indictment on July 13, 1939 (R. 98-113). The opinion is reported in 28 *F. Supp.* 177 (Advance Sheet).

**JURISDICTION.**

The Government seeks to invoke jurisdiction in this Court by direct appeal from the District Court under the provisions of The Criminal Appeals Act of March 2, 1907, c. 2564, 34 Stat. 1246, 18 U. S. C. A. 682. The order and judgment appealed from was entered on July 28, 1939 (R. 114-118). The order allowing appeal was entered in the District Court on August 17, 1939 (R. 94-95). On October 16, 1939 this Court postponed further consideration of the question of jurisdiction to the hearing of the case upon the merits.

## QUESTIONS PRESENTED.

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1. Whether or not this Court has jurisdiction of this appeal under The Criminal Appeals Act.

2. Whether or not the Agricultural Adjustment Act of May 12, 1933, as amended, and as re-enacted and amended by the Agricultural Marketing Agreement Act of 1937, removes the production and marketing of milk from the purview of Section 1 of the Sherman Act.

3. Whether or not Section 6 of the Clayton Act and the Capper-Volstead Act excepts and exempts Pure Milk Association, its officers, agents and employees, from prosecution by indictment under the penal provisions of Section 1 of the Sherman Act.

4. Whether or not Section 6 of the Clayton Act, the Capper-Volstead Act, and the Agricultural Adjustment Act of May 12, 1933, as amended and as re-enacted and amended by the Agricultural Marketing Agreement Act of 1937, construed together with the Cooperative Marketing Act of June 1926, the Agricultural Marketing Act of June 15, 1929 and the Robinson-Patman Act of June 19, 1936 excepts and exempts Pure Milk Association, its officers, agents and employees, from prosecution by indictment under the penal provisions of Section 1 of the Sherman Act.

## STATUTES INVOLVED.

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The Sherman Act of July 2, 1890, c. 647, 26 Stat. 209, as amended by the Act of August 17, 1937, c. 690, 50 Stat. 693, 15 U. S. C. 1.—Appendix A.

The Clayton Act of October 15, 1914, c. 323, 38 Stat. 730, 15 U. S. C. A. 17.—Appendix B.

The Capper-Volstead Act of February 18, 1922, c. 57, 42 Stat. 338, 7 U. S. C. A. 291.—Appendix C.

The Cooperative Marketing Act of June 15, 1926, 44 Stat. 802, 7 U. S. C. A. 451.—Appendix D.

The Agricultural Marketing Act of June 15, 1929, 46 Stat. 388, 12 U. S. C. A. 1141.—Appendix E.

The Agricultural Adjustment Act of May 12, 1933, c. 25, 48 Stat. 31, as amended August 24, 1935, c. 641, 49 Stat. 750, 7 U. S. C. A. 601.—Appendix F.

The Agricultural Marketing Agreement Act of 1937, c. 296, 50 Stat. 246, 7 U. S. C. A. 601.—Appendix G.

The Robinson-Patman Act of June 19, 1936, 49 Stat. 1526, 15 U. S. C. A. 13.—Appendix H:

The pertinent provisions of all the statutes involved are printed in the Appendix of this brief.

## STATEMENT OF THE CASE.

An Indictment in four counts charging a combination and conspiracy to restrain trade and commerce in the production, marketing and distribution of milk (R. 1-30), in violation of Section 1 of the Sherman Act of 1890, was returned in the United States District Court for the Northern District of Illinois, Eastern Division, on November 1, 1938. The Indictment was suppressed until November 15, 1938 (R. 135). Included among the defendants were Pure Milk Association, a duly incorporated organization of milk producers (R. 7) and six individuals associated with or employed by the defendant Pure Milk Association (R. 8). The Indictment charges these six individuals with having authorized, ordered or performed the acts charged against Pure Milk Association as constituting the offenses charged against it in the Indictment (R. 8, 10). Count One of the Indictment charges an unlawful combination and conspiracy to fix, maintain and control artificial and non-competitive prices to be paid producers of milk, (R. 11); Count Two, an unlawful combination and conspiracy to fix and maintain uniform, arbitrary and non-competitive prices for the sale of milk by distributors, (R. 17); Count Three, an unlawful combination and conspiracy to control the method of distributing milk in the City of Chicago, (R. 21) and Count Four, an unlawful combination and conspiracy to restrict, limit and control the supply of fluid milk coming into the City of Chicago (R. 25).

This group of appellees on January 7, 1939 filed a joint and several motion to quash and demurrer to the Indictment (R. 77-85). This motion to quash and demurrer, among other things, revealed Pure Milk Association to be a non-profit cooperative agricultural association of milk producers, incorporated without capital stock and

upon a not for profit basis under the provisions of the Agricultural Cooperative Act of the State of Illinois and that the Association was instituted for the mutual benefit of its members as producers of milk for the purpose of promoting the general welfare of its members as such producers and the business of dairying in the Chicago fluid milk district (R. 81-82). The motion to quash and demurrer contained appropriate references to show that such Association was operated for the mutual benefit of its members as producers of milk; that no member of the Association is allowed more than one vote; that it does not pay dividends on stock or membership capital in excess of eight per centum per annum and that the Association does not deal in the products of non-members to an amount greater in value than such as are handled by it for members (R. 82; Brief for the U. S. p. 56). The motion to quash and demurrer was duly acknowledged and sworn to. (R. 85).

On July 13, 1919 Honorable Charles E. Woodward, Judge of the District Court, filed his opinion holding that price fixing was the essence of Counts One, Two and Four of the Indictment (R. 105) and that Count Three was bad for duplicity in that the count charges at least four distinct and separate conspiracies and the demurrers to all counts of the Indictment should be sustained because of the construction and interpretation to be given certain special acts of Congress passed subsequent to the Sherman Act of 1890 (R. 98-114). On July 28, 1939 a formal order and judgment was entered by the District Court following his opinion sustaining the demurrer and motion to quash of these appellees as to all counts of the Indictment, upon the ground that no Indictment will lie under Section 1 of the Sherman Act because the special statutes relied upon by them, when properly construed, except and exempt Pure Milk Association, together with its officers and agents, from prosecution under Section 1 of the Sherman Act (R. 114-118).

## SUMMARY OF ARGUMENT.

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The order and judgment appealed from is based upon the construction of certain special statutes which have been enacted by Congress since the adoption of Section 1 of the Sherman Act, the statute upon which the Indictment is founded. These special statutes have been enacted by Congress under its expressed purpose of favoring, fostering, promoting and encouraging the organization of farmers, including dairymen, into associations under their own control and to provide the procedure to be followed by the Government in supervising, regulating and controlling their activities in interstate and foreign commerce and thus advance the economic welfare of producers and stabilize the markets for agricultural products in the interest of and for the general public welfare.

Congress has repeatedly recognized the essential distinguishing differences between the type of organization advantageous to producers of agricultural products, including dairymen, as compared to associations of other persons, trade associations and ordinary business corporations employed in other industries. Under its continuing authority to regulate, supervise and control the activities in interstate and foreign commerce of the organizations so recognized, Congress has enacted new and special statutes for the purpose of supervising, regulating and controlling the activities of such organizations and has provided new and exclusive remedies and procedure to be followed for the protection of the public from alleged violations of the exemptions and exceptions thus conferred, as distinguished from the procedure under Section 1 of the Sherman Act adopted nearly fifty years ago.

It will serve no useful purpose or help this Court to make an extensive summary of the argument of these appellees as presented under Points II and III of this brief.

No dispute is made of the fact that Pure Milk Association, its officers, agents and employees, is an organization falling within the class recognized by Congress in the enactment of these special statutes (See Government's Brief, p. 56), and with respect to these appellees, Congress has provided a complete, full and adequate remedy for the protection of the public from the things complained of in the Indictment.

## ARGUMENT.

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### I.

#### JURISDICTION.

On September 2, 1939 these appellees filed a statement against jurisdiction for this appeal, asserting that the decision or judgment appealed from is not based upon the invalidity or construction of the statute upon which the indictment is founded, Section 1 of the Sherman Act (Appendix A), but upon the interpretation of the several *special* acts of Congress passed subsequently thereto (Appendices B to H inclusive), and further that the decision or judgment appealed from is not a decision or judgment sustaining a special plea in bar because the statutes upon which these appellees rely to support their Demurrer and Motion to Quash provides the United States of America new and different remedies exclusive and in lieu of initial criminal proceedings to correct the wrongs complained of in the Indictment. The statement opposing jurisdiction on behalf of these appellees has been printed as a part of the record on this appeal, and sets forth the position of these appellees with respect to the question of jurisdiction.

## II.

**THE CAPPER-VOLSTEAD ACT IS A SPECIAL STATUTE CLASSIFYING FARMERS' COOPERATIVE ASSOCIATIONS UNDER THE POWER OF CONGRESS TO CLASSIFY, TO GRANT EXCEPTIONS AND EXEMPTIONS TO SUCH CLASS, TO PROVIDE FOR THE PROCEDURE TO BE TAKEN BY THE GOVERNMENT IN REGULATING RESTRAINTS OF INTERSTATE COMMERCE, AND SUCH ACT IS ENTITLED TO PREFERENCE OVER THE GENERAL STATUTE, NAMELY, SECTION 1 OF THE SHERMAN ANTI-TRUST ACT.**

With the general proposition asserted in the Government's Brief at page 23 to the effect that Section 1 of the Sherman Act inhibits contracts, combinations or conspiracies in restraint of trade, provided the restraint is unreasonable, we have no controversy. We submit, however, that the general prohibitions of Section 1 of the Sherman Act with respect to the activities and operations of an agricultural association composed of farmer-producers has been modified by later enactments of Congress by way of *special legislation*, among others, the Capper-Volstead Act, and that it must necessarily, as the lower court found, be construed in the light of these later enactments.

It must be admitted that Section 1 of the Sherman Act under which the Government seeks to prosecute Pure Milk Association, its officers, agents and employees, by indictment is pre-eminently a *general statute* protecting interstate trade and commerce from unlawful restraints and is the only section of the Sherman Anti-Trust Law under consideration.

It must also be conceded that the succeeding Acts hereinabove referred to are special congressional provisions which provide for exceptions as to farmers and cooperative associations dealing in farm commodities. These Acts being of a special and particular nature making exceptions and exemptions applicable to only a certain class of persons,

the question arises whether the construction to be placed upon these acts regarding the matters upon which Congress has attempted to legislate, shall be given preference over and above the general provisions of Section 1 of the Sherman Act.

This theory of law is sustained in the case of *Price v. United States*, 74 Fed. (2d) 120, where the Court said at page 120:

"The particular is entitled to preference over the general statute."

To the same effect is the case of *Baltimore Nat. Bank v. State Tax Commission of Maryland*, 297 U. S. 209, decided February 3, 1936, where Justice Cardozo, delivering the opinion of the Court, at page 215 said:

"It is a well settled principle of construction that specific terms covering the given subject matter will prevail over general language of the same or another statute which might otherwise prove controlling. *Kepner v. United States*, 195 U. S. 100, 125, 24 S. Ct. 797, 803, 49 L. Ed. 114, 1 Ann. Cas. 655; cf. *Ginsberg & Sons v. Popkin*, 285 U. S. 204, 208, 52 S. Ct. 322, 76 L. Ed. 704; *In re East River Towing Co.*, 266 U. S. 355, 367, 45 S. Ct. 114, 69 L. Ed. 324; *Washington v. Miller*, 235 U. S. 422, 428, 35 S. Ct. 119, 59 L. Ed. 295; *Rosecrans v. United States*, 165 U. S. 257, 262, 17 S. Ct. 302, 41 L. Ed. 708; *Town of Red Rock v. Henry*, 106 U. S. 596, 603, 1 S. Ct. 434, 27 L. Ed. 251."

To the same effect is *United States v. Hess*, 71 Fed. (2d) 78, where the Court at page 79 said:

"Where there are two or more statutes upon the same subject, one general and the other special, the special statute is recognized as an exception to the generality of the other statute without regard to priority of enactment." (Citing authorities.)

It is clear, therefore, in view of the fact that Section 1 of the Sherman Act is a general provision and that the subsequent acts referred to in this brief are special and par-

ticular acts having for their purpose certain well defined objectives creating a new public policy of Congress, farmers' cooperative associations for the marketing of farm commodities, are relieved from *initial prosecution* by indictment under Section 1 of the Sherman Act. (See Discussion, *infra*, Point III, p. 26.)

It is admitted that Section 1 of the Sherman Act is nothing more than a general statute "sweeping and unqualified" as is said by the Government. The mere fact that it is "sweeping and unqualified", yet general in its provisions, clearly brings the same within the well-settled principle of law that *special statutes take precedent over a general statute* involving the same matter which, in this case, is the restraint of trade and commerce among the several states. *The real question is, what is the effect and purpose of the subsequent acts, all of which are special statutes providing for exceptions and exemptions relative to the application of the anti-trust laws and their application to farmers relative to the production, marketing and sale of their farm commodities.* These special statutes were enacted by the Congress for the purpose of encouraging farmers and fostering cooperative associations among producers, and providing the procedure that is to be taken by the Government in case such societies or persons so exempted abuse their rights and unlawfully restrain trade in interstate commerce. The lower court construed these subsequent acts to be *special statutes* and correctly applied them as *having precedence* over the more general Section 1 of the Sherman Act.

In thus giving force and effect to the special statutes, the lower court in its order and judgment held that under a proper construction of the Capper-Volstead Act, among others, an agricultural cooperative association, together with its officers and agents, are exempt from prosecution under Section 1 of the Sherman Act (R. 114).

While the Government at page 24 of its brief asserts that it is clear that the acts charged in the indictment are illegal under the Sherman Act, yet sight is apparently lost of the fact that the District Court in its opinion (R. 103) referring to Counts I, II and IV of the Indictment determined that "*price fixing is the essence of these counts.*" This Court is bound by this interpretation of the Indictment. *United States v. Hastings*, 296 U. S. 188, 192-194; *United States v. Colgate & Company*, 250 U. S. 300. Consequently, this Court is confined to a review of the construction of the general statute as modified or altered by a *later special statute*, and may not concern itself with the individual charges contained in the Indictment, but must accept the District Court's interpretation of those charges.

Price fixing being the essence of these three counts of the Indictment, this case in so far as Pure Milk Association, its officers and agents are concerned, comes squarely within the regulatory provisions of Section 2 of the Capper-Volstead Act, and by virtue of the *remedial provisions and procedure* there provided, no prosecution will lie under Section 1 of the Sherman Act. Count III of the Indictment is not here involved for the reason that the lower court dismissed this count on grounds other than the construction of the statutes involved.

In Section 2 of the Capper-Volstead Act, Congress provides a new remedy in the case of agricultural cooperative associations relating to violations of law which might otherwise have come under Section 1 of the Sherman Act. Not only was the remedy new, but it likewise was exclusive. In other words, the Secretary of Agriculture, *an administrative officer of the executive department of the Government*, was given authority to initiate proceedings against an agricultural cooperative association when he has reason to believe that such an association monopolizes or restrains trade in interstate commerce. The procedure to be followed is

clearly prescribed by the statute. He is required and it is his duty to file a complaint against the Association, provide for a hearing, and upon the evidence adduced at such hearing, the Secretary is empowered to enter a cease and desist order against the Association directing it to cease and desist from monopolization or restraint of trade in the event his findings on the evidence disclose that the Association is guilty of the charge stated in the Secretary's complaint. Thereafter, the respondent association may, or the Secretary shall, if the association fails to comply with his order, file in the Federal District Court a certified copy of his order and all records of the proceedings. Thereupon, a regular judicial proceeding is instituted and the Attorney General is required to prosecute the case. On such hearing, the Court may take further evidence and enter a decree either affirming, modifying, or setting aside the Secretary's order, or enter such other decree as the Court may deem equitable.

This procedure may appear to be new, yet it is not novel. A direct analogy is disclosed in the jurisdiction and authority of the Interstate Commerce Commission over railroad corporations and the United States Shipping Board over maritime corporations. The Shipping Act which created the last mentioned board has been expressly held by this Court to supersede the Anti-Trust laws to the extent that the Shipping Act affords specific remedies to redress alleged wrongs, otherwise, cognizable by the courts under the Sherman Act. This is no less true of the Interstate Commerce Act, and we submit that it is likewise true of Section 2 of the Capper-Volstead Act.

This is well illustrated by the case of the *United States Navigation Company, Inc. v. Cunard Steamship Co., Ltd.*, 284 U. S. 474, 52 Sup. Ct. 247. Therein, a suit was brought for an injunction under the Sherman Anti-Trust Act and the Clayton Act to restrain a group of steamship companies

from continuing a conspiracy in restraint of trade and commerce. The acts charged to be illegal in the complaint fell within the expressed prohibitions of the Federal Shipping Act or as this Court pointed out, the charges in the complaint were in effect, even if not in terms, the component part of those prohibitions (p. 485). It was held by this Court that the plaintiff navigation company must seek redress by application to the United States Shipping Board and not relief under the Sherman Act. To like effect, but instead, dealing with the jurisdiction and authority of the Interstate Commerce Commission, see *Terminal Warehouse Company v. Pennsylvania R. Co., et al.*, 297 U. S. 500, 56 S. Ct. 546, (p. 551). As the Court points out (p. 514) "*Certain then it is that the Anti-Trust Laws are inapplicable in all their apparent breadth to carriers by rail or water.*"

In other words, this Court recognized in these comparatively recent decisions, the last mentioned being in 1936, that there were certain exceptions to the remedial provisions of the Anti-Trust laws whereby certain wrongs came within the exclusive jurisdiction of either the Interstate Commerce Commission or the United States Shipping Board.

This is precisely the situation in the case at bar. The alleged wrongs charged against Pure Milk Association, its officers and agents, in the indictment in this appeal, as construed by the lower court, are such as come *exclusively* within the jurisdiction of the Secretary of Agriculture subject to review by the courts. If the alleged acts of these appellees have restrained interstate trade and commerce, the Government has mistaken its remedy as to them.

Under the provisions of Section 2 of the Capper-Volstead Act, it was the duty of the Secretary of Agriculture to initiate proceedings against Pure Milk Association if he had reason to believe that such Association had restrained trade to such an extent that the price of milk

was thereby unduly enhanced and in no event could a criminal prosecution lie under Section 1 of the Sherman Act on the basis of the acts charged against Pure Milk Association in the Indictment before this Court in the instant appeal.

That this theory of the Capper-Volstead Act was embraced in the District Court's decision is evidenced at the point in the opinion where more detailed attention is given to the Capper-Volstead Act as one Act of Congress showing a definite trend in public policy toward the encouragement, promotion and regulation of agricultural cooperative associations. It is further evidenced by the fact that the appellees, Pure Milk Association, its officers and agents, at paragraphs 5, 6, 7 and 10 of their Demurrer and Motion to Quash pointed out, and the District Court had under consideration, allegations and averments to the following effect (R. 78-79; 105-106): That the charges contained in the indictment depart from the due and orderly process of law intended and provided for by existing acts of Congress relating particularly to producers of agricultural products and their collective efforts in marketing their products, and that the Government's procedure by way of indictment completely ignores provisions made in such laws for the determination and correction of the evils, misuses or transgressions by an agricultural association, such as the appellee, Pure Milk Association.

The Government's procedure by way of indictment further ignores all later enacted and presently existing supplementary federal and state laws authorizing the creation and operation of agricultural cooperative associations by persons engaged in the production of agricultural products as farmers and corollary acts of Congress especially designed to regulate the conduct of such associations and organizations, with respect to both monopolization and

restraint of interstate trade. It further ignores that these later enactments do not provide for, nor is there warranted under them any choice or election of remedy by way of indictment or complaint in respect to the application of the anti-trust laws to such associations or to correct the evils, misdirections or transgressions which may be attributed to such associations. It ignores a substituted procedure intended to apply corrective measures as outlined in Section 2 of the Capper-Volstead Act. The procedure there outlined is primary and exclusive and contemplates a complaint by an administrative officer, a hearing, the introduction of testimony and the issuance of a proper administrative order. Such an order, based upon the evidence, is one directed against an erring association requiring that it cease and desist from monopolization and restraint of trade. Thereafter, the entire procedure is subject to review by the Federal courts and the Attorney General is required to prosecute the cause. The court's jurisdiction is such as permits the entry of any appropriate order. Yet, despite this clear procedure specified by Congress, the Government has ignored the same in proceeding by indictment. The lower court has held such procedure to be in error and in effect, that the Government's remedy against the appellees, Pure Milk Association, its officers and agents, if any remedy be required, *on the evidence*, is specified and prescribed in Section 2 of the Capper-Volstead Act.

The Government relies upon numerous cases in support of the proposition that the Sherman Act "applies to interstate commerce in agricultural products, such as milk. . . . These cases will be individually discussed hereinafter, and we submit that an analysis of these decisions conclusively shows that they have no application to the case at bar. Most of these cases were decided either by

this Court or inferior Federal courts prior to the enactment of the Capper-Volstead Act. In none of these cases was the Capper-Volstead Act involved as an issue before the court, and in none of them was an association of agricultural producers involved as defendants, either under indictment or complained against in a chancery proceeding.

We contend that these cases are not authority for the proposition for which they are cited by the Government, and that Section 1 of the Sherman Act has been superseded by the later enactment, the Capper-Volstead Act of 1922, with respect to the collective marketing of agricultural products, including milk, in interstate commerce by a cooperative association of agricultural producers.

The first of these cases, viz., *Swift & Company v. United States*, 196 U. S. 375 was decided as early as 1905 and involved an indictment which charged the illegal combination of dealers not livestock producers in fresh meat to fix prices and stifle competition. In this category may be placed such other decisions cited as *United States v. Kissel*, 218 U. S. 601 decided December 12, 1910, *United States v. Swift & Company, et al.*, 188 F. 92, decided May 12, 1911, *Nash v. United States*, 229 U. S. 373, decided June 9, 1913, *United States v. Whiting, et al.*, 212 F. 466, decided March 23, 1914, *United States v. King*, 229 F. 275, decided October 23, 1915, *United States v. King*, 250 F. 908, decided April 25, 1916, *United States v. Corn Products Refining Company, et al.*, 234 F. 964, decided in June, 1916 and *United States v. M. Piowaty & Sons, et al.*, 251 F. 375, decided in September, 1917.

In the *Nash* case *supra* the conspiracy charged in the indictment was against certain shipping and warehouse companies engaged in buying, selling, shipping, exporting and warehousing turpentine. The object of the conspiracy

was alleged to be the driving of competitors out of business and the monopolization and restraint of trade. The case involved neither farm cooperatives nor those dealing in farm commodities. The *Kissel* case, *supra*, was likewise a criminal proceeding wherein the indictment charged an unlawful conspiracy to restrain trade in refined sugar. Sugar producers were not defendants in the case. *United States v. Swift, et al.*, *supra*, was a proceeding by way of indictment against the Swift Company and others engaged in the packing business. Live stock producers were not involved. *United States v. King*, 229 F. 275 concerned an indictment which, on its face, failed to show that agricultural producers comprised the defendant association which was under indictment for restraint of trade. The later *King* case, *supra*, involved an indictment under the Sherman Act and the Court pointed out that the defendant association, so far as the indictment showed, was not composed of agricultural producers, and that, therefore, the defendants could not invoke the protection afforded by Section 6 of the Clayton Act of 1914. The *Corn Products* case, *supra*, an equity proceeding under the Sherman Act, involved manufacturers of corn products and not the producers. The *Piowaty & Sons* case, *supra*, involved "middlemen" as distinguished from agricultural producers. The *Whiting* case, *supra*, was a criminal proceeding charging milk dealers in Boston with an alleged conspiracy. Milk producers were not parties defendant.

In *Sugar Institute, Inc., et al. v. United States*, 297 U. S. 553, decided March 30, 1936, a trade association which was alleged to restrain interstate trade in violation of the Sherman Act was the subject of an action in chancery. Sugar producers were not parties defendant, nor was the Capper-Volstead Act in issue. The case of *Greater New York Live Poultry Chamber of Commerce v. United States*, 47

F. (2d) 156, decided January 12, 1931, dealt with an indictment against a *trade association* whose members purchased live poultry from commissionmen for sale in the Metropolitan New York area. Producers of poultry were not under indictment in the case nor was the Capper-Volstead Act in issue. The same may be said in respect to *Live Poultry Dealers' Protective Association v. United States*, 4 F. (2d) 840, decided December 2, 1924. Therein poultry *dealers* and local agents formed a *trade association* to establish and maintain prices on poultry entering the New York market, and their activity was enjoined under the Sherman Act. There again poultry producers were not parties defendant in the case.

It may be said without further equivocation that these cases are not authority for the proposition that the Sherman Act applies to the marketing of milk in interstate commerce by the Pure Milk Association, an agricultural cooperative association, organized under the cooperative laws of the State of Illinois, and as the Government admits, meets all of the qualifications of the Capper-Volstead Act (p. 56, Government's Brief).

Numerous other cases are cited by the Government in support of its theory that the Sherman Act as originally passed did not exempt farmers and their associations from criminal prosecution under Section 1 of the Sherman Act. None of these cases are in point on the question at issue and not a single one of them has anything to do with the construction to be placed upon the acts of Congress which have been enacted since the adoption of the Sherman Act in the effort Congress has exerted to aid and assist producers of farm products in the solution of the serious economic problems with which they are constantly confronted. In most instances these cases were proceedings in equity under the Sherman or Clay-

ton Acts and in none of the decisions was the Court considering an indictment against an agricultural cooperative association, its members, officers or employees.

*Addyston Pipe & Steel Company v. United States*, 175 U. S. 211, decided December 4, 1899, was a suit in chancery instituted upon behalf of the United States in an effort to obtain an injunction perpetually restraining six corporations who were engaged in the manufacture, sale and transportation of iron pipe from continuing a combination alleged to have been entered into between them in restraint of trade and commerce as prohibited by the Sherman Act.

*Loewe v. Lawlor*, 208 U. S. 274, decided February 3, 1908, was a civil action filed under Section 7 of the Sherman Act in an attempt by the plaintiff to recover three-fold damages for injuries alleged to have been inflicted by action of the defendants through a combination or conspiracy declared to be unlawful by the Act.

*Standard Oil Company of New Jersey v. United States*, 221 U. S. 1, decided May 15, 1911, was a suit in equity filed to review a decree dissolving a holding company on a charge it existed in violation of the anti-trust laws.

The case of *Gompers v. Buck's Stove & Range Co.*, 221 U. S. 418, decided May 15, 1911, came to this Court on a writ of certiorari to the Court of Appeals for the District of Columbia to review a judgment affirming a judgment of the Supreme Court of the District, punishing an alleged contempt of an injunction against the continuance of a boycott by a sentence of imprisonment. The question involved was whether or not the defendant was guilty of contempt of court.

*United States v. American Tobacco Company*, 221 U. S. 106, decided May 29, 1911, was an action instituted by the United States to prevent the continuance of alleged

violations of the first and second sections of the Sherman Act.

The case of *Standard Sanitary Mfg. Co. v. United States*, 226 U. S. 20, was decided November 18, 1912. It was an appeal taken from a decree entered in the lower court in favor of the Government against sixteen corporations and thirty-four individual defendants, all but one of whom were officials of the corporations. The defendants were manufacturers of enamel iron wire in various places in the United States, controlling approximately 85% of such wire, and engaged in both interstate and foreign commerce. This was a chancery proceeding and also involved certain patents.

*United States v. Union Pacific R. R. Co.*, 226 U. S. 61, decided December 2, 1912, was a civil proceeding in equity to restrain the railroad company from doing certain things claimed to be unlawful under the Sherman Act.

The case of *United States v. Patten*, 226 U. S. 525, decided January 6, 1913, was a criminal proceeding instituted by the filing of an indictment charging violations of the Sherman Anti-Trust Law. It came to this Court upon an appeal by the Government to review a judgment of the Circuit Court sustaining a demurrer to the indictment. The case involved a conspiracy to corner the market of the available supply of cotton throughout the United States through purchases for future delivery, coupled with withholding sales in the market for a limited time.

The evidence in this case showed that James A. Patten and others were engaged in a *speculative gambling proposition*, the purpose of which was to control the price of cotton in the entire United States by gambling in futures, and either inflate or deflate the price above or below normal, and thus injure the public.

*Eastern States Retail Lumber Dealer's Assn. v. United States*, 234 U. S. 600, decided June 22, 1914, came up on an appeal from a decree by the Government under the Sherman Act. The object of the suit was to secure an injunction against certain alleged combinations of retail lumber dealers which, it was claimed, had entered into a conspiracy to prevent wholesale lumber dealers from selling lumber directly to consumers.

All of the foregoing cases were decided prior to the adoption of the Clayton Act by Congress and the questions involved arose out of criminal proceedings in only one or two instances.

The case of *Lawlor v. Loewe*, 235 U. S. 522, was decided January 5, 1915. This was a mere civil proceeding filed by one individual against another for damages claimed under the provisions of the Clayton Act. The suit involved members of a labor organization and charged a combination or conspiracy to compel the plaintiff to unionize its factory through the use of a boycott.

The case of *United States v. Reading Company*, 253 U. S. 26, decided April 26, 1920, was an appeal from a decree entered in an equitable proceeding instituted by the Government for the purpose of dissolving the intercorporate relationship existing between the defendants. It was alleged that such relationship constituted a combination in restraint of interstate commerce in anthracite coal and an attempt to monopolize such trade and commerce in violation of Sections 1 and 2 of the Sherman Act.

*Duplex Printing Press Company v. Deering, et al*, 254 U. S. 443, decided January 3, 1921, was a suit in equity seeking an injunction to restrain a course of conduct carried on by the defendants in maintaining a boycott against the products of complainant's factory. No indictment or criminal prosecution was involved.

*American Column Co. v. United States*, 257 U. S. 377, was decided December 19, 1921. It arose out of a bill in chancery charging that the American Hardwood Manufacturers Association was an unincorporated company following a consolidation of two similar associations composed of approximately 365 members operating 465 mills, operating under what was known as a Plan. The complaint charged that the Plan constituted a combination and conspiracy to restrain interstate commerce in hardwood lumber through restriction of competition and the maintenance of prices prohibited by the Sherman Act. While this case did involve an unincorporated trade association, the members thereof were not producers or farmers, and the decision, as in all of the foregoing cases, was handed down prior to the passage of the Capper-Volstead Act by Congress. The case has no bearing upon the question of whether or not the farm cooperative associations, their members, officers and employees, are excepted from criminal prosecution under Section 1 of the Sherman Act.

The case of *United States v. American Oil Company*, 262 U. S. 371, decided June 4, 1923, did not involve an indictment or a criminal prosecution. It arose out of a bill in equity filed against the defendants, consisting of twelve corporations operating in several different states, demanding that they be restrained from further interfering with interstate trade and commerce in linseed oil, cake and meal as declared unlawful by the Sherman Act.

The case of *Binderup v. Pathe Exchange*, 263 U. S. 291, decided November 19, 1923, was a civil proceeding in equity under the provisions of Section 7 of the Sherman Act.

The case of *United States v. Brims*, 272 U. S. 549, decided November 23, 1926, was a criminal proceeding arising from an indictment against William F. Brims and

others and came up on an appeal from judgment of conviction for engaging in a combination and conspiracy in restraint of trade as prohibited by the Sherman Act. The commodity involved was building materials and the question upon appeal was whether or not there was a fatal variance between the allegations and proof of the indictment.

*United States v. Trenton Potteries*, 273 U. S. 392, decided February 21, 1927, was also a criminal proceeding arising out of an indictment against twenty-three corporations and twenty individuals, charging violations of the Sherman Act. Evidence in the case revealed that the defendants were engaged in and controlled the manufacture and distribution of 82% of the vitreous pottery fixtures made in the United States for use in bathrooms and lavatories. None of the defendants were engaged in agricultural pursuits nor did the commodities involved include agricultural products.

The decision in *Local 167 v. United States*, 291 U. S. 293 decided February 5, 1934, arose out of an appeal from an injunction against a conspiracy claimed to have been commenced by the appellant and others in May, 1927, to restrain and monopolize interstate trade and commerce in live and freshly dressed poultry in violation of Sections 1 and 2 of the Sherman Act. This was not a criminal proceeding.

The Government's proposition that the acts charged in the indictment are illegal under the Sherman Act and are not exempt from its application, in so far as these appellees are concerned, wholly ignores the force and effect of the later special statutes enacted since the adoption of the Sherman Law, and the cases cited in support of this proposition in no way assist in the proper construction that should be placed upon the later enactments of Congress.

## III.

**PURE MILK ASSOCIATION IS COMPOSED OF PRODUCER MEMBERS INCORPORATED UNDER THE AGRICULTURAL CO-OPERATIVE ACT OF ILLINOIS, WITHOUT CAPITAL STOCK UPON A NOT FOR PROFIT BASIS, AND ITS METHOD OF OPERATION MEETS THE REQUIREMENTS OF THE CAPPERVOLSTEAD ACT, UNDER SECTION 2 OF WHICH A COMPLETE REMEDY AS AGAINST THESE APPELLEES IS PROVIDED FOR RELIEF FROM THE THINGS COMPLAINED OF IN THIS INDICTMENT.**

*The decision or judgment appealed from is based upon the application, interpretation of and construction by the court of the force and effect of the following acts:*

(a) The Clayton Act of October 15, 1914, 38 Stat. 730, *et seq.*, 15 U. S. C. A. 12, *et seq.* Appendix B, p. 70.

(b) The Capper-Volstead Act of February 15, 1922, 42 Stat. 388, 7 U. S. C. A. 291, 292. Appendix C, pp. 71-73.

(c) The Cooperative Marketing Act of July 2, 1926, 44 Stat. 802, *et seq.*, 7 U. S. C. A. 451, *et seq.* Appendix D, p. 74.

(d) The Agricultural Marketing Act of June 15, 1929, 46 Stat. 11, 12 U. S. C. A. 1141, *et seq.* Appendix E, pp. 75-76.

(e) The Agricultural Adjustment Act of May 12, 1933, 49 Stat. 750, 7 U. S. C. A. 601, *et seq.* Appendix F, pp. 77-78.

(f) The Agricultural Adjustment Act of May 12, 1933, as amended and re-enacted by the Agricultural Marketing Agreement Act of 1937, 50 Stat. 246, *et seq.*, 7 U. S. C. A. 601, *et seq.* Appendix G, pp. 79-83.

(g) The Robinson-Patman Act of 1936, 49 Stat. 1526, *et seq.*, 15 U. S. C. A. 13, *et seq.* Appendix H, p. 84.

Beginning with the enactment of the Clayton Act of October 15, 1914, which supplemented the Sherman Anti-

trust Act of 1890, the Congress of the United States initiated a new clearly defined public policy favoring, fostering and promoting the formation, organization and operation of farmers' cooperative associations intended to improve the economic status of agriculture as follow:

(a) The Clayton Act *expressly* provides for the existence and operation of agricultural organizations instituted for the purpose of mutual help and not having capital stock or conducted for profit, and such organizations or the members thereof are not to be held or construed to be illegal combinations or conspiracies in restraint of trade.

(b) The Capper-Volstead Act of February 18, 1922 *expressly* authorizes persons engaged in the production of agricultural products, as dairymen, to act together in associations such as Pure Milk Association, in collectively marketing their products in interstate or foreign commerce. "Such associations may have marketing agencies in common; and such associations and their members may make the necessary contracts and agreements to effect such purposes." This Act is fully discussed hereafter.

(c) The Cooperative Marketing Act of July 2, 1926 *expressly* authorizes persons engaged as dairymen acting together in associations for the marketing of their products in interstate or foreign commerce to acquire, exchange, interpret and disseminate past, present and prospective crop, market, statistical, economic and other similar information by direct exchange between them or such associations.

(d) By the adoption of the Agricultural Marketing Act entitled "An Act to establish a Federal Farm Board, to promote the effective merchandising of agricultural commodities in interstate and foreign

commerce, and to place agriculture on a basis of economic equality with other industries" as adopted on June 15, 1929, *it is declared to be the public policy of Congress* to promote the effective merchandising of agricultural commodities in interstate and foreign commerce so that agriculture will be placed on a basis of economic equality with other industries, *and to that end to protect, control and stabilize the currents of interstate and foreign commerce in the marketing of agricultural commodities and other food products—*

(I) By minimizing speculation,

(II) By preventing inefficient and wasteful methods of distribution,

(III) By encouraging the organization of producers into associations under their control for greater unity of effort in marketing, and by promoting a farm marketing system of producer owned and controlled cooperative associations, and

(IV) By aiding in preventing and controlling surpluses in any agricultural commodity.

It is now left to the Farm Credit Administration to execute the powers vested in it in such manner as will in the judgment of the Administration aid to the fullest practicable extent in carrying out the policy above declared.

(e) In the enactment of the Agricultural Adjustment Act of 1933, as subsequently reenacted, Congress declared that the disruption of the orderly exchange of commodities in interstate commerce impairs the purchasing power of farmers and destroys the value of agricultural assets which support the national credit structure, and these conditions affect transactions in agricultural commodities *with a national public interest*, and burden and obstruct the normal channels of interstate commerce. It is also

thereby declared to be the *policy* of Congress through the exercise of the *powers conferred upon the Secretary of Agriculture to establish and maintain such orderly marketing conditions for agricultural commodities in interstate commerce as will establish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy equivalent to the purchasing power of agricultural commodities in the base period as therein defined, and to protect the interests of consumers through powers therewith conferred upon the Secretary of Agriculture.*

(f) Under the provisions of the Agricultural Marketing Agreement Act of 1937 the Secretary of Agriculture through the issuance of orders or the fostering of marketing agreements as thereby provided for, is *expressly empowered to provide for the classification of milk in accordance with the form in which or the purpose for which it is to be used; provide for a method for fixing minimum prices which all handlers shall pay and the time when payments shall be made, such prices to be uniform as to all handlers subject only to adjustments provided for, and to provide for the payment of uniform prices to producers, and the conditions under which new producers may be accepted into or permitted to sell milk in a given marketing area.*

(g) The Robinson-Patman Act approved June 19, 1936, made it unlawful to *discriminate in prices* and requires the charging of *uniform prices.*

The Government has failed to recite all of the acts referred to in the opinion of the Court. Furthermore, it is unnecessary to cite any authorities that these appellees are not limited to the grounds stated in the opinion of

the District Court, or the order entered in pursuance thereof. These appellees are entitled to refer to any Acts of Congress, or decisions of courts, which sustain the theory of the District Court relative to the exemptions and exceptions made by Congress subsequent to the enactment of the Sherman Act which may directly or indirectly sustain the theory of the lower Court as expressed in its opinion and order.

We contend that the District Court was right in the interpretation of the purpose of the acts here referred to in that they provide for an *exception or exemption* as to farmers in relation to the production and marketing of their products, and *provide for supervision, regulation and control over such production and marketing of agricultural products in an orderly manner*; and that all of these laws passed *subsequent* to the Sherman Act, pointed the way to farmers whereby they might meet the *economic situation* with which they, as well as the public at large, were confronted.

The Capper-Volstead Act provides a *specific and particular procedure* to be observed by farmers in the production, sale and marketing of their products, and also provides the procedure that is to be taken by the Government through its officers and agents, in order to supervise, control and regulate the production and marketing of farm commodities, as well as the procedure to be taken by the Government to enforce the object and purpose of other Acts of Congress adopted subsequent to the Sherman Antitrust Law.

A proper construction of these laws shows the *intention and purpose of Congress* with respect to the production and marketing of farm commodities, and that these laws were passed for the purpose of making exceptions and exemptions, to provide a *special classi-*

fication for producers of farm commodities of all kinds, including milk, in order to promote, foster and encourage the intelligent and orderly marketing of agricultural products through cooperation, and thereby eliminate speculation and waste; and to stabilize the markets for agricultural products. This was to be accomplished through the incorporation and operation of agricultural cooperative associations and societies by expressly conferring power upon them to make and execute marketing contracts and agreements with their members as well as with the purchasers and buyers of their products, all of which contracts and agreements are necessary to successfully accomplish the objects and purposes of these organizations.

Congress therefore made an *exception* and recognized a special class to include producers of agricultural commodities following the enactment of the Sherman Act. During this period of legislative history, forty-seven states of the Union have adopted almost uniform laws for the purpose of carrying out this same general public policy. Courts can and should, therefore, liberally construe all of this legislation so that the purpose and intent of Congress and the legislatures of the several states will be carried out by recognizing and *protecting the class falling within the exceptions and exemptions thus provided for.*

It is *inconsistent* for Congress to have adopted a general public policy favoring, fostering and promoting the formation and operation of organizations intended to advance the interests of agricultural producers *without intending thereby to supersede all laws which, prior thereto, prohibited the formation and operation of such organizations.*

The contention that the Sherman Act as originally enacted failed to except agricultural cooperative associa-

tions or producers of farm products is a moot question so far as this case is concerned. This principle might have been good, if asserted in a similar case pending before the present century, or at least prior to the passage of the Clayton Act, and it makes no difference at all that while debate over the enactment of the Sherman Act was in progress an amendment was offered and rejected providing exemptions for persons engaged in agricultural pursuits. The point is that since that time new and far reaching laws, developments and trends in the economic thinking of the country have taken place. Agricultural cooperative associations among farmers have in the meantime become legalized and accepted as an essential, necessary and customary method and system within our agricultural economy.

Throughout the Nation in the legislatures of the separate states, as well as in Congress and many times by judicial decision, the organization and operation of such associations has been recognized as promoting the public welfare.

The Government cannot justify the position it now takes wherein it seeks to enforce a public policy and procedure of fifty years ago which, so far as its application, if any, to the farmer and the marketing of agricultural products is concerned, has been *superseded by a public policy* declared by Congress as a result from time to time of advanced thought, experience and exhaustive study of the economic problems arising since the passage of the Sherman Act, and the plight of the farmer as well as the public, which, in the judgment of Congress, required the declaration of a *new public policy and procedure* relating to the production, sale and marketing of farm commodities.

It is true that only a few members of Congress, at the time of the passage of the Sherman Anti-Trust Law, insisted that Congress make an *exception* as to farmers and

the marketing and production of farm commodities. We see no argument in the point because the majority of the Congress nearly fifty years ago was unable to see the necessity of such progressive laws as a matter of public policy, and rejected an amendment offered, the object and purpose of which was to make farmers exempt from the application of the Sherman Act in view of the fact that since that time such laws have been passed.

Recognizing these problems, the Legislature of the State of Illinois in adopting the Act under which Pure Milk Association is incorporated declared the public policy of this state to be:

"In order to promote, foster and encourage the intelligent and orderly marketing of agricultural products through co-operation; to eliminate speculation and waste; to make the distribution of agricultural products between producer and consumer as direct as can be efficiently done; to stabilize the marketing of agricultural products, and to provide for the organization and incorporation of agricultural co-operative associations and societies; this Act is passed." (Ill. Rev. Stat. 1939, Chap. 32, Sec. 440.)

This Legislature at the same time likewise provided:

"No association as defined in this Act engaged in any of the activities herein, shall be deemed to be a conspiracy or combination in unlawful restraint of trade or an illegal monopoly; or an attempt to lessen competition or to fix prices arbitrarily, nor shall the marketing contracts and agreements between the association and its members or any agreements authorized in this Act be considered illegal as such or in unlawful restraint of trade or as part of a conspiracy or combination to accomplish an improper or illegal purpose." (Ill. Rev. Stat. 1939, Chap. 32, Sec. 468.)

In adopting the Agricultural Marketing Act approved June 15, 1929, Congress declared:

"(a) It is hereby declared to be the policy of Congress to promote the effective merchandising of agricultural commodities in interstate and foreign com-

merce, so that the industry of agriculture will be placed on a basis of economic equality with other industries, and to that end to protect, control, and stabilize the currents of interstate and foreign commerce in the marketing of agricultural commodities and their food products—

- (1) by minimizing speculation.
- (2) by preventing inefficient and wasteful methods of distribution.
- (3) by encouraging the organization of producers into effective associations or corporations under their own control for greater unity of effort in marketing and by promoting the establishment and financing of a farm marketing system of producer-owned and producer-controlled cooperative associations and other agencies.
- (4) by aiding in preventing and controlling surpluses in any agricultural commodity, through orderly production and distribution, so as to maintain advantageous domestic markets and prevent such surpluses from causing undue and excessive fluctuations or depressions in prices for the commodity." (46 Stat. 11, 12 U. S. C. A. 1141.)

This court in the case of *Liberty Warehouse Co. v. Burley Tobacco Growers' Co-op. Marketing Ass'n.*, 276 U. S. 71, in construing the Bingham Cooperative Marketing Act of Kentucky, said at page 92: . . .

"It is stated without contradiction that cooperative marketing statutes substantially like the one under review have been enacted by 42 states. Congress has recognized the utility of co-operative association among farmers in the Clayton Act (38 Stat. 731, (15 U. S. C. A. 17), the Capper-Volstead Act (42 Stat. 388, 7 U. S. C. A. Secs. 291-292)) and the Cooperative Marketing Act of 1926 (44 Stat. 802, 7 U. S. C. A. Sec. 451-457). These statutes reveal widespread legislative approval of the plan for protecting scattered producers and *advancing the public interest*. Although frequently challenged, we do not find that any court has condemned an essential feature of the plan with the single exception of the Supreme Court of Minnesota."

This court then discussed at length the following cases:

*Warren v. Alabama Farm Bureau Cotton Assn.*,  
213 Ala. 61, 104 So. 264.

*Arkansas Cotton Growers' Co-op. Ass'n. v. Brown*,  
168 Ark. 504, 270 S. W. 946.

*Manchester Dairy System, Inc., v. Hayward*, 132  
Atl. 12.

*Tobacco Growers' Co-op. Ass'n. v. Jones*, 185 N. C.  
265, 117 S. E. 174.

*Northern Wisconsin Co-operative Tobacco Pool v.  
Bekkedal*, 182 Wis. 571, 197 N. W. 936.

*Dark Tobacco Growers' Co-op. Ass'n. v. Dunn*, 150  
Tenn. 614, 266 S. W. 308.

After an extensive review of the opinions rendered in the above cases, this Court, at page 96, said:

"The opinion generally accepted—and upon reasonable grounds, we think—is that the co-operative marketing statutes *promote the common interest*. The provisions for protecting the fundamental contracts against interference by outsiders are *essential to the plan*. This court has recognized as permissible some *discrimination intended to encourage agriculture*. *American Sugar Refining Co. v. Louisiana*, 179 U. S. 89, 95, 21 S. Ct. 43, 45 L. Ed. 192; *Cox v. Texas*, 202 U. S. 446, 26 S. Ct. 671, 50 L. Ed. 1099. And in many cases it has affirmed the general power of the states, so to legislate as to *meet a definitely threatened evil*: *International Harvester Co. v. Missouri*, 234 U. S. 199, 34 S. Ct. 859, 58 L. Ed. 1276, 52 L. R. A. (N. S.) 525; *Jones v. Union Guano Co.*, 264 U. S. 171, 44 S. Ct. 280, 68 L. Ed. 623. Viewing all the circumstances, it is impossible for us to say that the Legislature of Kentucky could not treat marketing contracts between the association and its members as of a separate class, provide against probable interference therewith, and to that extent limit the sometime action of warehousemen."

In the case of *Potter v. Dark Tobacco Growers' Co-opera-*

*tive Association* (1923), 201 Ky. 441, 257 S. W. 33, the Court said at page 35:

"Indeed, since the Clayton Amendment of the Sherman Act (U. S. Comp. St. § 8835f) *expressly exempts* agricultural and horticultural organizations instituted for the purpose of mutual help, and not having capital stock or conducted for profit *from anti-trust provisions*, it recognizes as reasonable a classification based upon such pursuits. Hence the *Sherman Act as amended* is itself expressive of a change in the public attitude and *policy toward agricultural and horticultural pursuits* in relation to other business activities, and a recognition of a *necessity for the public welfare* of permitting organization among such citizens to enable them to meet justly and without undue advantage the conditions they encounter in necessary trade relations with other citizens, or rather groups.

"Nor are the *Clayton Act and the many other recent acts of Congress treating farmers as a distinct class the only expressions of such a change in public opinion and the public policy of our nation with reference to them and their economic problems*. The enactment by the Legislatures of 30 or more of the states of enabling acts precisely like the Bingham Co-operative Marketing Act is further evidence of the present state of public opinion on the matter, as is the attitude of every other agency through which an enlightened public policy may be declared, including the *most recent resume of the state of the Union by the President of the United States*.

"The basis of this change in public opinion toward combination and classification is not in any sense political, *but economic rather*, and, in our judgment, it is *because of basic economic conditions, affecting vitally not only the farmers, but also the public weal*, that the classification based upon *agricultural pursuits is reasonable, just, and imperative for the good of the entire nation and every citizen thereof*." (Italics ours.)

The reasoning of the Supreme Court of the State of Kentucky as far back as 1923 seems almost *prophetical in view of the laws that have been passed by Congress since that time*. Such laws recognize the economic situation relating to farmers as affecting the entire nation. It cannot be

doubted that such laws were clearly intended to declare the *public policy* of the United States for the advancement of the *public welfare*.

We call attention to the opinion of Attorney General William D. Mitchell, rendered to the President of the United States on April 11, 1930 (Vol. 36, p. 326 of the Opinions of the Attorneys General) wherein he informed the President that under the Capper-Volstead Act, farmer producers, acting together by and through cooperative associations that qualify thereunder, were exempt "from prosecution under said Federal anti-trust laws." The Attorney General said in his opinion at page 333:

"Section 1 of the Capper-Volstead Act relates to producers acting together in associations, corporate or otherwise, 'in collectively processing, preparing for market, handling, and marketing in interstate and foreign commerce, such products of persons so engaged.' That marketing in 'interstate and foreign commerce' is an essential feature of associations which may, be regarded as qualified under the Capper-Volstead Act *is manifest not only from its language but from the purpose of that Act. Its object was primarily to insure cooperative associations that qualified thereunder immunity from prosecution under the Federal anti-trust laws. Those laws apply only to persons engaged in interstate and foreign commerce. There would have been no reason for the enactment of a Federal law to protect persons engaged in the production of agricultural products and dealing solely in intrastate commerce from the operation of the anti-trust laws. Section 2 of the Capper-Volstead Act provides for proceedings by the Secretary of Agriculture against the associations described in Section 1 if he 'shall have reason to believe that any such association monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any agricultural product is unduly enhanced by reason thereof' and for the enforcement of orders made by the Secretary pursuant to such proceeding. The entire Act thus relates to the activities of such associations in interstate and foreign commerce.*" (Italics ours.)

A review of the legislation and decisions previously referred to will reveal that *Congress has from time to time modified, changed and superseded the procedure originally intended under the Sherman Act.*

It was held in the case of *United States v. Trans-Missouri Freight Assn.*, 166 U. S. 290, 340, that the public policy of a state is what the Legislature declares it to be, and that provisions in a contract whereby a purchaser agrees to purchase the entire supply of an agricultural commodity from the producer does not make the contract in restraint of trade. See also *Twin City Pipe Line v. Harding Glass Company*, 283 U. S. 353. It is evident, therefore, that the *public policy of a State* is what the Legislature declares it to be, and the *public policy of the United States* is what Congress declares it to be. *These matters of public policy and procedure established by these subsequent acts cannot be set aside by applying Section 1 of the Sherman Act, passed nearly fifty years ago.*

*Such construction would destroy the public policy announced by the Legislatures of the various states and approved by Congress, as expressed by the later legislation changing the public policy of the Government toward agriculture and those engaged in the production of farm commodities. Congress intended to encourage, favor, foster and promote the formation, organization and operation of farm cooperative associations in the interest of producers in order to improve the economic status of agriculture for the promotion of the public welfare.*

Some light reasoning is indulged in by the Government. at page 59 of its brief to the effect that Section 6 of the Clayton Act of 1914 did not confer upon labor organizations a blanket exemption from the prohibitions of the Sherman Act. Citing *Loewe v. Lawlor*, *supra*, *Duplex Company v. Deering*, *supra*, and *Bedford Company v. Stone Cutters' Association*, 274 U. S.

37. The Government would have this Court apply the decisions in those cases which concerned labor organizations involved in a boycott, to farmers and their associations such as the appellee, Pure Milk Association. *The application of these cases to the one at bar cannot be made legitimately.* Congress has recognized the essential distinguishing features between these two classes, labor and agriculture, and has already enacted separate legislation applicable to these respective classes. In addition to what we have already said regarding the long line of cases discussed in Part II, *supra*, it is worthy of note that these three latter cases were civil suits instituted either for the collection of damages from a labor union and its members, or for an injunction to restrain them from committing or continuing an alleged unlawful activity. A criminal prosecution by indictment under Section 1 of the Sherman Act is not involved in these three cases. They merely decide that a secondary boycott by a labor union in the manner in which such was conducted does not come within the immunity conferred by Section 6 of the Clayton Act as applied to labor. In determining that the acts of the union did not come within the *rule of reason*, this Court concluded:

“Tested by these principles, the propriety of the unions’ conduct can hardly be doubted by one who believes in the organization of labor. Neither the individual stone cutters nor the unions had any contract with any of the plaintiffs or with any of their customers.” *Bedford Company v. Stone Cutters’ Assn.*, 274 U. S. 37, at p. 58.

The unions in question were apparently not operating under any agreement or contract with the parties against whom they were seeking to enforce a secondary boycott. Applying this principle to the question at issue, the record clearly discloses that the appellee, Pure Milk Association, did have agreements with all of its members (R. 8) and

contracts of sale with the buyers to which it sold the products of its members (R. 12).

We note in the Government's brief (p. 63), the contention that although the Interstate Commerce Act embodies a remedial system that is complete and self-contained, yet the Sherman Act in certain cited cases was held to apply notwithstanding the Commission's jurisdiction. The cases cited are the following:

*United States v. Pacific & Arctic Railway Co.*, 228

U. S. 87, decided in April, 1913;

*United States v. Union Pacific R. R. Co.*, 226 U. S.

61, decided in 1912;

*United States v. Joint Traffic Association*, 171 U. S.

505, decided in 1898, and

*United States v. Trans-Missouri Freight Assn.*

166 U. S. 290, decided in 1897.

A reading of the last three mentioned cases discloses that the only act involved was the Sherman Anti-Trust Act. This Court did not decide in any of those cases that the Sherman Act and the Interstate Commerce Act were independent of one another. Therefore, the Government's statement is not based upon an accurate conception of these three decisions. The only one of the afore cited cases in which both the Sherman Act and the Interstate Commerce Act are discussed is that of *United States v. Pacific & Arctic Railway Company, supra*. However, before considering that case, it is important to point out that all of these cases cited on the theory that the Sherman Act prevails notwithstanding the jurisdiction of regulatory boards, were decided prior to the vesting by Congress of jurisdiction in the Interstate Commerce Commission of certain provisions of the Clayton Act of 1914, i. e., sections 2, 3, 7 and 8 of the Clayton Act (38 Stat. 730; 731, 732). Furthermore, all of

*these cases were decided prior to the enactment in 1916 of the Federal Shipping Act.*

The *Pacific & Arctic* case, *supra*, involved a ruling of the lower court dismissing all counts of an indictment on demurrer thereto. Counts III, IV and V of the indictment which alleged violations of the Interstate Commerce Act were dismissed by the lower court on the ground that the proper forum in the first instance was the Interstate Commerce Commission, and not the Court. This ruling was affirmed by the United States Supreme Court. Counts I and II of the indictment were dismissed by the lower court for the same reason. This Court, however, reversed this part of the judgment on the ground that Counts I and II properly charged an offense under the Sherman Act, stating that the gist of those counts was monopolization.

It is all important, however, to bear in mind that when this case was decided in 1913, the Clayton Act of 1914 had not yet been enacted into law. Under Section 3 of the Clayton Act authority is vested in the Interstate Commerce Commission to proceed against a railroad corporation which is alleged to violate the prohibitions of said section. One of the enumerated prohibitions therein contained is that of monopoly. Consequently, it might well be that had the *Pacific & Arctic* case, *supra*, come before this Court subsequent to the passage of the Clayton Act of 1914, rather than before its passage, this Court would have sustained the lower court's ruling on Counts I and II as it did with respect to Counts III, IV and V for the reason that the proper forum was the Interstate Commerce Commission and not the court.

In view of this analysis of the *Pacific & Arctic* case, *supra*, we assert that it is not an authority for the position here taken by the Government, but rather is an authority directly supporting the contention of these appellees, Pure Milk As-

sociation, its officers and agents, that the proper forum in this case in the first instance is the Secretary of Agriculture, subject to review by the Federal Courts under Section 2 of the Capper-Volstead Act, and not by way of indictment under Section 1 of the Sherman Act.

In passing we note that some courts have regarded the *Traffic Association* cases, *supra*, as having been repudiated by subsequent decisions of this Court. See *List v. Burley Tobacco Growers' Co-op. Ass'n.*, 114 Ohio St. 361; 151 N. E. 471, 474.

Thus we reiterate what we said in Part II, *supra*, that by direct analogy to the authority of the Interstate Commerce Commission and the United States Shipping Board, plenary and exclusive jurisdiction was vested in the Secretary of Agriculture by Section 2 of the Capper-Volstead Act to proceed against an agricultural cooperative association such as the appellee, Pure Milk Association, in light of the charges in the indictment in this case as interpreted by the District Court.

The power of prosecution by the Department of Justice is not inherent in that Department. This power is limited to exercising punitive measures under Acts of Congress creating the crimes, misdemeanors and forms of irregularity or misconduct to which such punitive measures are provided to apply. The course to be pursued by the Government in its efforts to enforce observance of its laws controlling the activities of persons in any of the varied relations where individual rights or the public welfare are involved, is determined by the Acts of Congress with respect thereto. Questions arising in interstate commerce or the law in relation thereto are no exemption. It is so commonly known that this Court may well take judicial notice of the fact that no agricultural cooperative associations or marketing agencies recognized solely as such by

the law of any state, or by the United States, existed at the time the Sherman Act was enacted. Such associations did not become the creatures of any special statute, state or national, until many years following the passage of the Sherman Anti-Trust Act. After such associations came into existence by virtue of the Acts of the Legislatures of the various states, consideration was given by Congress for devising appropriate measures for regulating their conduct in interstate commerce.

*The settled legislative policy of treating associations of agricultural producers differently from ordinary business corporations rests upon a reasonable basis of classification approved by the courts. Statutes fostering the development and growth of cooperative associations of producers for marketing farm products have been enacted primarily since the early 1920's in all but one of the states.\**

With two early exceptions, wherever the question has been raised that such statutes enacted by state legislatures violate the Fourteenth Amendment of the Federal Constitution, courts of last resort have held the statutes to be constitutional. *Thus, there has been judicial sanction of the special privileges or advantages conferred by such statutes upon farmers' cooperative associations.*

One of these decisions which commends itself to quotation is that of *List v. The Burley Tobacco Growers' Association*, 114 Ohio St. 361, 151 N. E. 471, decided in 1926. Therein the Supreme Court of Ohio in passing on the question of reasonableness of classification upon which the Cooperative Marketing Act was based, stated (p. 480):

*"In determining whether co-operative associations organized for the purpose of marketing agricultural products are such a favored class as to be within the*

\* See statutes cited in footnote 11 to the dissenting opinion of Mr. Justice Brandeis in *Frost v. Corporation Commission*, 278 U. S. 515, 540 and in footnote 14 to that opinion (pp. 541-542).

inhibitions of the fourteenth amendment, we must look to the fact that persons engaged in agriculture are widely scattered and compose so numerous a class that it is a physical and economic impossibility to combine them all in any commercial enterprise, and we should further look to the fact that many of them are very small producers of such limited means that they must market their products immediately after harvesting, and are therefore at the mercy of purchasers, without any voice whatever in making prices or terms. It must be recognized on the other hand that merchants and manufacturers dealing in any single line of agricultural products are comparatively few and congregated in definite localities. \* \* \* Such different situations and conditions were evidently considered by the Legislatures of the different states and by Congress, whose duty and province it is to consider the economic problems involved. Such legislative acts should not be held to be invalid and unconstitutional, unless clearly violative of the constitutional inhibition.

"In the last analysis this controversy turns upon a question of public policy. The earlier anti-trust legislation is being modified and certain well-defined exemptions are being created. The earlier decisions of the courts construing those acts strictly are being modified and overturned by later decisions. \* \* \* Co-operative marketing acts have been passed by more than three-fourths of the states of the Union. These enactments have been upheld by the courts of last resort of 15 states of the Union, and, up to this time (1926), in not a single case have any of such state laws been declared invalid. \* \* \*

To like effect see the following:

*Tobacco Growers Co-op. Asso. v. Jones*, 185 N. C. 265 117 S. E. 174; *Kansas Wheat Growers v. Schulte*, 113 Kan. 672, 216 P. 311; *Brown v. Staple Cotton Growers Co-op. Asso.*, 132 Miss. 859, 96 So. 649; *Northern Wisconsin Co-op. Tobacco Pool v. Bekkedal*, 182 Wis. 571, 197 N. W. 936; *Dark Tobacco Growers Co-op. Asso. v. Dunn*, 150 Tenn. 612, 266 S. W. 308; *Minnesota Wheat Growers Co-op. Marketing Asso. v. Huggins*, 162 Minn. 471, 203 N. W. 420;

*List v. Burley Tobacco Growers Co-op. Assn.*, 114 Ohio St. 361, 151 N. E. 491; *Dark Tobacco Growers Co-op. Asso. v. Robertson*, 84 Ind. App. 51, 150 N. W. 106; *Porter v. Dark Tobacco Growers Co-op.*, 201 Ky. 441, 257 S. W. 33; *Harrell v. Cane Growers Co-op.*, 160 Ga. 30, 126 S. E. 531; *Nebraska Wheat Growers v. Norquist*, 113 Nebr. 731, 204 N. W. 798; *Warren v. Alabama Farm Bureau Cotton Asso.*, 213 Ala. 61, 104 So. 264; *Manchester Dairy System v. Hayward*, 83 New Hamp. 193, 132 Atl. 12; *Clear Lake Co-op. Livestock Asso. v. Weir*, 200 Iowa 1293, 206 N. W. 297; *Hollingsworth v. Texas Hay Asso.*, (Tex. Civ. App. 1922), 246 S. W. 1068; *Washington Cranberry Asso. v. Moore*, 117 Wash. 430, 201 P. 773; *Poultry Producers v. Barlow*, 189 Cal. 278, 208 P. 193; *Oregon Growers Co-op. Assn. v. Lentz*, 107 Ore. 561, 212 P. 811; *South Carolina Cotton Growers v. English*, 135 S. C. 9, 133 S. E. 542; *Milk Producers' Marketing Co. v. Bell*, 234 Ill. App. 222; *Barns v. Dairymen's League Co-op. Asso. Inc.*, 220 App. Div., 624, 222 N. Y. Supp. 294; *Stark County Milk Producers Asso. v. Tabeling, etc.*, 129 Ohio St. 159, 194 N. E. 16.

This Court has in turn had occasion to pass upon the Kentucky Cooperative Marketing Statute involved in the *List* case *supra*. The case to which reference is made is that of *Liberty Warehouse Company v. Burley Tobacco Growers' Cooperative Marketing Association*, 276 U. S. 71, 48 S. Ct. 291, decided in 1928, from which case we have quoted *supra*, pp. 34-35. In addition, this Court quoted with approval from the opinion of the court below (pp. 94, 95):

"We take judicial knowledge of the history of the country and of current events, and from that source we know that conditions at the time of the enactment of the Bingham Act were such that the agricultural producer was at the mercy of speculators and others who fixed the price of the selling producer and the final consumer through combinations and other ar-

rangements, whether valid or invalid, and that by reason thereof the former obtained a grossly inadequate price for his products. So much so was that the case that the intermediate handlers between the producer and the final consumer injuriously operated upon both classes and fattened and flourished at their expense. It was and is also a well-known fact that, without the agricultural producer, society could not exist, and the oppression brought about in the manner indicated was driving him from his farm, thereby creating a condition fully justifying an exception in his case from any provision of the common law, and likewise justifying legislative action in the exercise of its police power.'

*In Arkansas Cotton Growers Co-op. Assn. v. Brown* (1925), 168 Ark. 504, the Court sustained a Co-operative Marketing Act—

'The statute seems to be in a form which has become standard, and has been enacted in many of the states, the enactment of such legislation being manifestly prompted by the universal urge to promote prosperity in agricultural pursuits. There has been much discussion of the plan in the decisions of the courts of the various states where it has been adopted, and the general view expressed is that the statute should be liberally construed in order to carry out the design in its broadest scope.'

*Tobacco Growers' Co-op. Assn. v. Jones*, 185 N. C. 265—

'In view of the necessity of protecting those engaged in raising tobacco against the combination of those who buy the raw product at their own figures and sell it to the public at prices also fixed by themselves, this movement has been organized. By a careful examination of all the provisions of the act under which the association is acting, it will be seen that every precaution has been taken to insure that it will not be used for private gain, and can operate only for the protection of the producers.'

*Northern Wisconsin Co-operative Tobacco Pool v. Bekkedal*, 182 Wis. 571—

'The reasons for promoting such legislation are generally understood. It sprang from a general, if not

well-nigh universal, belief that the present system of marketing is expensive and wasteful, and results in an unconscionable spread between what is paid the producer and that charged the consumer. It was for the purpose of encouraging efforts to bring about more direct marketing methods, thus benefiting both producer and consumer, and thereby promoting the general interest and the public welfare, that the legislation was enacted.'

(pp. 96, 97, id.):

*'The opinion generally accepted—and upon reasonable grounds, we think—is that the co-operative marketing statutes promote the common interest. . . . This court has recognized as permissible some discrimination intended to encourage agriculture. American Sugar Refining Co. v. Louisiana, 179 U. S. 89, 95. Cox v. Texas, 202 U. S. 446. And in many cases it has affirmed the general power of the States, so to legislate as to meet a definitely threatened evil. International Harvester Co. v. Missouri, 234 U. S. 199; Jones v. Union Guano Co., 264 U. S. 171. Viewing all the circumstances, it is impossible for us to say that the legislature of Kentucky could not treat marketing contracts between the Association and its members as of a separate class, provide against probable interference therewith, and to that extent limit the sometime action of warehousemen.*

*. . . . 'The question is whether the restrictions of the statute have reasonable relation to a proper purpose. Miller v. Wilson, 236 U. S. 373, 380 . . .'*  
(Italics supplied.)

See also *American Sugar Refining Co. v. Louisiana*, 179 U. S. 89, 21 S. Ct. 43, 45 L. Ed. 102; *International Harvester Company v. Missouri*, 234 U. S. 199, 34 S. Ct. 859; *Aero, etc. Transit Company v. Georgia Public Service Commission*, 295 U. S. 285, 289-291.

The cases cited and quoted from *supra* pertaining specifically to co-operative marketing acts, demonstrate that any specialized treatment accorded farmers when acting together in associations, is based upon a reasonable class-

ification not offensive to the Fourteenth Amendment of the Federal Constitution. These cases further establish that both by Federal and State statute and by the judicial interpretation of them that public policy is strongly in favor of agricultural cooperation. They and many decisions of this court cited *supra* conclusively indicate that the Fourteenth Amendment of the Federal Constitution has not deprived states of their power of classification in legislation and to make differences of regulation where substantial differences of conditions exist. They establish that a classification is not invalid because of simple inequality. They have been uniformly sustained as not arbitrary and capricious by the courts of last resort including the decision of this court in the *Liberty Warehouse* case, *supra*.

Thus far, we have been discussing State co-operative marketing statutes in their relation to the Fourteenth Amendment of the Federal Constitution. From a federal legislation standpoint, long prior to the decision in the *Liberty Warehouse* case, *supra*, Congress itself recognized the utility of cooperative association among farmers.

In 1914 the Clayton Act (38 Stat. 730, 15 U. S. C., Sec. 17) was enacted in which non-stock, non-profit agricultural organizations were excepted from the operation of the anti-trust laws.

The War Finance Corporation Act of April 5, 1918 (40 Stat. 512, 15 U. S. C., Sec. 348) authorized advances to cooperative associations of producers whenever they had made advances for agricultural purposes or discounted commercial paper for such purposes.

The Grain Futures Act (42 Stat. 998, 7 U. S. C., Sec. 17 (e)) extended privileges to cooperative associations not accorded to other business enterprises. These provisions were retained in the amendment and reenactment of the

law in 1936 as the Commodity Exchange Act (49 Stat. 1491, 7 U. S. C.—Supp. IV, Sections 7 (e), 10 (a)).

There followed in 1922 the Capper-Volstead Act here in question (42 Stat. 388, 7 U. S. C., Sections 291, 292).

Under the McKinley Tariff Act of 1926 (44 Stat. 91, 26 U. S. C., Sec. 75L (b)) cooperative associations were exempted from registration.

Since the *Liberty Warehouse* decision Congress has been prolific in furthering this policy of aiding and encouraging the establishment and operation of cooperatives and likewise in these later enactments has dealt differently with such cooperatives in contradistinction to proprietary enterprises.

The Agricultural Marketing Act passed in June 1929 (46 Stat. 18, 12 U. S. C., Sections 1141, 1141 (J)), expressed a congressional policy to promote merchandising of agricultural commodities in such a way as to put agriculture on a basis of economic equality with other industries.

Loans to cooperatives were expressly authorized by an act passed June 15, 1929 (46 Stat. 14, 12 U. S. C., Sec. 1141 (e)), authorized the Governor of the Farm Credit Administration to organize a "Central Bank for Cooperatives" and 12 banks to be known as "banks for cooperatives" to make loans to cooperative associations.

The Robinson-Patman Act of June, 1936 (49 Stat. 1528, 15 U. S. C., Supp. IV, Section 13 (a)) exempts a cooperative association from any requirement of the act which would prevent the association from returning to its members "the whole or any part of its net earnings or surplus resulting from its trading operations in proportion to their purchases from, to, or through the association."

The Agricultural Marketing Agreement Act of 1937 (50

Stat. 246, 7 U. S. C., Sec. 601, *et. seq.*) is shot through with cooperative marketing recognition.

Agricultural associations have been exempted from payment of federal income taxes on corporations since 1913 (38 Stat. 172), and the 1934, 1936 and 1938 income tax laws (48 Stat. 700; 49 Stat. 1673; 52 Stat. 480; 26 U. S. C., Sec. 103 (12)) have continued this exemption.

Under these last mentioned revenue acts, provisions exempting "Agricultural Associations" were sustained in *Flint v. Stone Tracy Company*, 220 U. S. 107, 173 and in *Brushaber v. Union Pacific Railroad Co.*, 240 U. S. 1, 21.

The *Grain Futures Act*, *supra*, was sustained in *Chicago Board of Trade v. Olsen*, 262 U. S. 1, in the face of the contention that certain of its provisions were for the benefit only of farmers organizations. See also the case of *In Re Marketing Association of Fort Wayne, Inc.*, 8 F. (2d) 626, wherein it was held that a dairy cooperative association is not a "monetary business or commercial corporation" within the meaning of the Federal Bankruptcy Act.

Consequently, if said statutes which have authorized the association of agricultural producers for the purpose of collectively marketing their produce and have further exempted their contracts and agreements, as well as their status, from the prohibitions of said anti-trust statutes, do not offend against the Fourteenth Amendment, then, *a fortiori*, Capper-Volstead Act does not offend against the Fifth Amendment to the Federal Constitution. This is necessarily true because the Fifth Amendment unlike the Fourteenth Amendment has no equal protection clause, and legislation by Congress subject to "restraints less narrow and confining" than is legislation of the several states. *Currin v. Wallace*, No. 275, decided January 30, 1939, 59 S. Ct. 379. See also *Quong Wing v. Kirkendall*.

23 U. S. 59, 62; *LaBelle Iron Works v. United States*, 256 U. S. 377; *Brushaber v. Union Pacific R. Co.*, 240 U. S. 1.

More recently this Court has had occasion to pass upon the constitutional validity of the Agricultural Marketing Agreement Act of 1937 (50 Stat. 246, 7 U. S. C. A., Section 601, *et. seq.*), in the case of *United States v. Rock Royal Co-op., Inc., et al.*, Nos. 771, 826-828, decided June 5, 1939, 59 S. Ct. 993, and in that case the provisions of the statute which excepted cooperative associations acting as handlers from the payment of the uniform price which all other handlers were required to pay was held not violative of the Fifth Amendment on the ground that it was not an arbitrary and unreasonable classification. See also *Stewart Machine Company v. Davis*, 301 U. S. 548, 584.

In view of the foregoing, and in light of our interpretation of the scope and intention of the Capper-Volstead Act, we submit that Congress may accord farmers and their cooperative associations treatment different from that given proprietary business concerns, and that such a law, while classification legislation, is founded upon a reasonable basis and being a special statute takes precedence over the general law, Section 1 of the Sherman Anti-Trust Act.

Congress fully understood when it passed the Capper-Volstead Act and the other acts referred to, that it provided an adequate remedy for the protection of the public in case any cooperative association should attempt to unlawfully restrain trade. Section 2 of the Capper-Volstead Act does not preclude action being taken by the Department of Justice and either the Government or the producer, if dissatisfied with the findings in a desist order of the Secretary of Agriculture, may have the record and proceedings certified to a District Court and a decree entered therein, either affirming, modifying or setting aside

said order, or may enter such other decree as the court may deem equitable. After the case has reached such a stage, the Department of Justice shall have charge of the enforcement of such an order and "the court may upon conclusion of its hearing enforce its decree by permanent injunction, or other appropriate remedy."

It will thus be seen that a District Court may enforce its decree by any appropriate remedy. Such proceedings would be much more effective than a proceeding such as is now pending upon indictment. Congress well knew when it adopted the Capper-Volstead Act and the subsequent acts that the inherent right of a court to enforce its decree means that the court can, if its orders are not obeyed, punish the violator for contempt of court, or enter such other order as would be effective in enforcing its decree. Congress saw fit to place the regulation and correction of agricultural cooperatives in the hands of the Secretary of Agriculture, and there being nothing contained in the Act to the contrary, it must be presumed that the jurisdiction so given to the Secretary of Agriculture is in the first instance exclusive and intended as a clear and distinct exception and a limitation upon the right of the Department of Justice as is clearly intended by the terms of Section 2 of said Act. The exception was made for an economic reason. Agriculture is an enterprise distinct and different from every other form of business activity. The structure of an agricultural association is different from that of a business corporation for profit. The purpose of these cooperatives is to encourage and foster the production of the things that are necessary to human existence. Many elements are involved, among which are the nature of the occupation itself, the problems to which it is subjected by the uncertainties of season, weather and marketing conditions and the usually un-

certain and slender margin of profit derived by those who engage in the business of the production of milk, under all the rules of supervision with respect to health of live stock, sanitation of surroundings and equipment.

The problem of the average dairyman or farmer milk producer, in addition to the manifold uncertainties of supply and demand, embrace not only all the hazards peculiar to the pursuit of farming, but in addition thereto, certain inherent exigencies affecting this particular calling. Among these are the requirements for general equipment, consisting of a place or location stocked with good producing cows and general equipment necessary to the healthy production of fluid milk. If dairying is to become his central object, the extent and nature of his investment in that line usually compels him to forego other extensive farming activities. The fact that he has centered upon dairying, however well and carefully equipped, does not in itself provide any assurance of success. His problems are of a continuing nature and, although by careful management, he may be able to produce abundantly, the uncertainties of a fair or profitable market for his product are a constant and menacing anxiety.

We further call attention to the fact that the provisions of Section 2 of the Capper-Volstead Act imposing upon the Secretary of Agriculture the duty of apprehending any violation by any Agricultural Cooperative Association of the laws pertaining to monopolies or restraints upon trade in interstate or foreign commerce, is a reasonable exercise of the police power, and was and is intended to be sufficient for the purpose of investigating, apprehending, regulating, correcting and administering disciplinary deterrents sufficient to the purpose of discouraging such violation.

Since considerable time is devoted by the Government to a discussion of the legislative history of the Capper-

Volstead Act (Brief for the United States; pp. 64-67), it must regard that act as reasonably susceptible of the interpretation placed upon it in this Brief. This Court has frequently indicated that it will not, in construing a statute, consider its legislative history where its meaning is plain and unambiguous. See, for example, *Helvering v. City Bank Farmers' Trust Co.*, 296 U. S. 85. Since the meaning of the Capper-Volstead Act is plainly that attributed to it, *supra*, the legislative history of the statute would not have been here considered had the Government not seen fit to discuss it. The legislative history of the law, however, leads inevitably to conclusions identical to those already reached in this Brief. In order that the discussion which follows may proceed with clarity, it will be profitable to outline at the outset the background of the Capper-Volstead Act.

The first bill concerning farm-cooperatives to be introduced in the Congress was known as the Capper-Hersman Bill, and was introduced in the House of Representatives by Mr. Hersman on July 24, 1919 as H. R. 7783 (66th Cong., 1st Sess.). Although hearings on this bill were had before the House Committee on the Judiciary, it does not appear that any Committee report was made thereon, and no definite action was ever taken with respect to the bill.

The following year, another bill concerning agricultural associations, differing from the Capper-Volstead Act only in aspects not now material, was introduced in the House of Representatives as H. R. 13931 (66th Cong., 2d Sess., 1920). This bill was passed by the House, substantially in its original form (59 Cong. Rec., Part 8, p. 8041). It was also passed by the Senate, but only after being amended in a manner very material to this discussion (60 Cong. Rec., Part 1, p. 377). The Senate amendments to H. R. 13931, subsequently to be discussed, were not acceptable to the House of Representatives, and so the bill never be-

came law (60 Cong. Rec., Part 1, p. 571). It should here be noted that at the time when H. R. 13931 was pending, a bill containing provisions virtually identical to those of H. R. 13931 was pending in the Senate. This bill was known as S. 4344 (66th Cong., 2d Sess.). Although there were hearings on S. 4344 before the Subcommittee of the Senate Committee on the Judiciary, it was never reported out of Committee, very probably because of its similarity to H. R. 13931.

Undaunted by their previous failures, the proponents of legislation relative to agricultural associations introduced in the 67th Congress the bill which finally became the Capper-Volstead Act. The bill was known as H. R. 2373 (67th Cong., 1st Sess.). As stated in the Brief of the Government, the bill was enacted into law substantially in the form introduced in the House of Representatives.

From the foregoing summary of the background of the Capper-Volstead Act, it is apparent that insofar as the legislative history of H. R. 2373 may be pertinent to a construction of the Act, so also is the legislative history of H. R. 13931 and S. 4344.

The debates in the Senate concerning H. R. 2373 indicate very clearly that those who participated most actively believed that agricultural cooperatives were thereby intended to be excepted and rendered free from prosecutions under the Sherman Act. In order that the full import of these debates may be clearly understood, the amendment to the House bill proposed by the Senate Committee on the Judiciary and discussed extensively by the Senate is set forth in full in the margin.<sup>1</sup> Pertinent excerpts from the Senate debates follow:

<sup>1</sup> "Nothing herein contained shall be deemed to authorize the creation of, or attempt to create, a monopoly, or to exempt any association organized hereunder from any proceedings instituted under the act entitled 'An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes,' approved September 26, 1914, on account of unfair methods of competition in commerce."

Mr. Kellogg [referring to the House version of H. R. 2373]: \* \* \* It may be said, therefore, that before such associations can be prosecuted under the Sherman Act for any restraint of trade or monopoly, whether it is a mere technical monopoly or not, the Secretary of Agriculture must investigate and make a finding that the cooperative association is in restraint of trade or is a monopoly and is unduly enhancing prices. \* \* \*

Mr. King: It is intended, then, as I understand the Senator, to make all such organizations absolutely immune from criminal prosecution.

Mr. Kellogg: *They are immune from criminal prosecution, and I think they ought to be.* I have never known much to be accomplished by criminal prosecution under the Sherman Act; if anything, very little.

Mr. King: *It denies the right of the Attorney General to initiate proceedings, even though he should believe from uncontrovertible evidence that a monopoly stupendous in character and oppressive in results exists by reason of combinations of the character contemplated.*

Mr. Kellogg: The Senator understands from the statement I made that the Attorney General can prosecute suits instituted by the Secretary of Agriculture.<sup>2</sup>

Mr. Fletcher: \* \* \* I am cordially in full sympathy with the ideas and the plans which are back of this bill. I do not agree that it is necessary to amend the bill as proposed by the committee in order to avoid the establishment of a monopoly *and I think it is advisable to place these associations or organizations outside the provisions of the Sherman antitrust law.*<sup>3</sup>

Mr. Walsh (of Montana): \* \* \* So that the sole matter of difference—in substance, *the sole question for determination—is the question as to whether we shall authorize the setting up of monopolies under the protection of this bill.* That is the one question for the Senate to determine.

<sup>2</sup> 62 Cong. Rec., Part 2, p. 2049 (italics supplied).

<sup>3</sup> 62 Cong. Rec., Part 2, p. 2107. (italics supplied).

The Senate committee insists that we shall not authorize that to be done. I understand the position of Senators on the other side to be that we shall, and that is a plain statement of the issue between us.

Mr. Pomerene: Mr. President, am I right in this, then, that *the difference between the two is that under the House bill, if I understand the Senator correctly, there may be a monopoly, but subject to regulation—*

Mr. Walsh (of Montana): *Exactly.*

Mr. Pomerene: And under the Senate committee bill there may be a monopoly, but without any regulation.

Mr. Walsh (of Montana): No; the Senate committee bill forbids monopoly utterly.

Mr. Pomerene: What is the provision to which the Senator refers as forbidding the monopoly?

Mr. Walsh (of Montana): It will be found on page 5 of the committee substitute, as follows:

Nothing herein contained shall be deemed to authorize the creation of or attempt to create a monopoly, or to exempt any association organized hereunder from any proceedings instituted under the act entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914, on account of unfair methods of competition in commerce."

Mr. Brandegee: No; I do not find anything in either the House bill or the Senate bill which would prohibit any contract of that kind; in fact, Mr. President, *both the House and the Senate bills would authorize such associations to restrain trade to any degree this side of absolute monopoly; it would authorize every member of any such association to make contracts in violation of the Sherman antitrust law; it would authorize the associations themselves to make such contracts, and then would authorize all the associations to make interlocking contracts with all other associations described in the bill. It would be possible, in my opinion, under the provisions of the bill for associations of tobacco growers, associations of cotton growers, associations of cattlemen, associations of hide and leather men, associations of sugar men, and all associations of those*

\* 62 Cong. Rec., Part 2, p. 2122 (italics supplied).

who are producing agricultural products, nuts, fruits, and dairy products, to combine in one grand association. That would be perfectly possible and perfectly lawful, provided it did not bring about an absolute monopoly of the business.<sup>5</sup>

Mr. Brandegee: Mr. President, it is well for us to consider what we are doing and what this bill means, and I will take upon myself the responsibility of saying that the classes of persons named in the bill—to wit, farmers, planters, ranchmen, dairymen, nut or fruit growers,—who are authorized to act in associations outside of the Sherman law, produce and control the entire food and clothing supply of this country. All the cotton and linen and wool, every article of food, animal or vegetable, is controlled by the classes of people *against whom Congress is asked to say we will not longer enforce the Sherman antitrust law, and they may make contracts in restraint of trade, they may increase prices as much as they please, under the House bill, not until some court but until the Secretary of Agriculture*—whose appointment is so largely controlled and influenced by the very classes of people named in this bill—can be persuaded that they are asking an unconscionable price. Nobody can interfere with them, no matter how oppressive the price is or how outrageous; *no suit can be brought, no judicial decision of any kind can be had*, but a Cabinet official—usually appointed after conference with the agricultural interests—is the official who must be satisfied that the price is excessive before the great balance of the country, the great mass of the consumers of the country, can get any relief at all.<sup>6</sup>

Mr. Cummins: . . . If I thought I could wield any influence at all, I would move to strike out section 2 of this bill. I would rather allow the bill to stand as a substantial repeal of the antitrust law with regard to agricultural products than take this further step that is proposed in section 2; but I know that an amendment of that kind is futile. I know I cannot rewrite this bill at this time, and so I have said what I have said.

<sup>5</sup> 62 Cong. Rec., Part 3, p. 2171 (italics supplied).

<sup>6</sup> 62 Cong. Rec., Part. 3, p. 2172 (italics supplied).

simply that I may at least have a clear conscience so far as speech is concerned. My vote may seem to be inconsistent with what I have said, but I must choose between these two alternatives, and I say frankly that I prefer the House text, with all its infirmities, to the Senate substitute for just one reason, and that is that the Senate substitute leaves intact the attempt to create a monopoly, which I think destroys its value entirely.<sup>7</sup>

Mr. Walsh (of Montana): . . . I wish it to be thoroughly understood, as we proceed to vote, that to reject the Senate substitute and to adopt the House text will be to remove the inhibition from setting up any milk monopoly in any one of the great cities of the country, and with no check upon anything they may do in the way of exacting exorbitant prices from consumers, except as it is provided in section 3 [sic] of the bill, the validity of which is open to most serious question, as pointed out in the very persuasive and informing discussion by the Senator from Iowa [Mr. Cummins], which no one has attempted to answer at all, and as to the significance and operation of which even the proponents of the bill differ.<sup>8</sup>

The Government lays much stress upon the fact (Brief for the United States, pp. 64-65) that Mr. Volstead, when he rendered the report for the House Committee on the Judiciary concerning H. R. 2373, stated that in the event that associations authorized by the bill should do anything forbidden by the Sherman Antitrust Act, they would be subject to the penalties imposed by that law. House Report No. 24, 67 Cong., 1 Sess.; 61 Con. Rec., Part 1, p. 687. The Government also quotes similar statements made by Mr. Volstead when the bill was debated in the House of Representatives (Brief for the United States, pp. 65-66). Mr. Volstead's colleagues had no such notion of the meaning of the bill. There follow excerpts from the House debates on H. R. 2373:

<sup>7</sup> 62 Cong. Rec., Part 3, p. 2266.

<sup>8</sup> 62 Cong. Rec., Part 3, p. 2279.

Mr. J. M. Nelson: *The purpose of this act is to relieve the farmers from the possible menace of the Sherman law in interstate commerce, is it not?*

Mr. Sanders (of Indiana): *I think so.*

Mr. J. M. Nelson: And it leaves it to the arbitrary action of the Secretary of Agriculture.

Mr. Sanders (of Indiana): In the first place.

Mr. J. M. Nelson: Then what do they gain under this law?

Mr. Sanders (of Indiana): I doubt if they would gain very much.

Mr. Layton: *They would gain this, would they not, that if this act is passed they will not be liable to prosecution?*

Mr. Mills: \* \* \* But this bill goes much further than that. The report says that in so far as the terms of the act are concerned, aside from the mere act of forming an association, they do not apply. *The [Committee] report says that the bill does not eliminate those provisions of the Sherman antitrust law. I beg to differ with that report.*

I should like to point out to you gentlemen that the bill permits the formation of these associations and permits the associations and their members to make necessary agreements to effect such purposes. Now, what are the purposes referred to? Preparing for market, handling and marketing their products for interstate and foreign commerce. It permits them to make any agreement that they see fit to make. *In other words, it permits one of these associations, if necessary, to combine with another interstate association.*

Mr. Husted: Will the gentlemen yield?

Mr. Mills: I am afraid I can not for want of time. As I say, it permits one of these associations, if necessary, to combine with another association in violation of the Sherman Antitrust Act. It permits one association, if necessary, to make an agreement with all other existing associations not to sell to a single commission merchant that sells below a certain price. *It is possible, if it is the intent of the framers of this bill to simply permit the formation of an association*

or corporation for the purpose of marketing, to say specifically in this bill that the other provisions relating to what these associations shall do after they are formed shall be subject to the provisions of the Sherman Antitrust Act.<sup>10</sup>

Mr. Hill: Mr. Speaker and gentlemen of the House, this proposed bill to authorize association of producers of agricultural products does two things. It repeals line 5, section 6 of the Clayton Act and it also authorizes a type of price agreement which was found illegal under the Sherman Act in the case of the United States against the Standard Sanitary Enamel Co. and 48 other defendants, generally known as the Bathtub Trust case, which was decided in the circuit court of appeals in 1915. If you look at the first page of this bill you will see that it provides that these associations may be corporations with capital stock. That repeals the provision of the Clayton Act in section 6, which says:

Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations instituted for the purposes of mutual help and not having capital stock—

And so forth.

*So in voting for this bill you vote definitely to repeal the Sherman Act as modified by the act of October 15, 1914, which is known as the Clayton Act.* In the second place, you definitely authorize the organization of farmers' corporations for price-fixing agreements. It has been said here that farmers could not organize to physically work together, but they can organize to fix prices, and this bill gives that permission. There is no more reason why you should authorize this in the case of farmers and exempt them from the Sherman and other trust acts than you should in case of bathtub makers or tin-can makers. It is also in violation of the decision of the courts of the United States in the American Can Co. antitrust prosecution. Therefore I shall vote against this bill.

If this bill, however, is to be passed I think we should have a proper regard for usual and regular

<sup>10</sup> Ibid. (italics supplied).

law enforcement procedure. *The provision on page 3, line 14, is dangerous and improper in that it authorizes the Secretary of Agriculture to take the place of the Attorney General in instituting the prosecution of cases, and therefore should this bill come to a reading I shall offer an amendment conforming this bill to the usual procedure in the drug acts and the cattle inspection acts and to the normal procedure in ordinary criminal prosecutions by which the Attorney General, not the Secretary of Agriculture, shall institute any court proceedings.*<sup>11</sup>

Mr. Hersey. Mr. Speaker, this bill exempts farmers' cooperative marketing associations from the provisions of the Sherman antitrust law and the Clayton Antitrust Act.<sup>12</sup>

It is significant that the portion of the Report of the House Committee on the Judiciary on H. R. 2373 upon which the Government places so much stress is absent from the Report of the House Committee on the Judiciary on H. R. 13931, which bill, as has already been seen, was virtually identical in terms to H. R. 2373. See House Report No. 939, 66th Cong., 2nd Sess. (1920). In this connection it may be noted that H. R. 13931, after being passed by the House, was passed by the Senate only after the following amendment was added thereto (60 Cong. Rec., Part 1, pp. 376, 377):

"Nothing herein contained shall be deemed to authorize the creation of, or attempt to create, a monopoly, or to exempt any association hereunder from any proceedings instituted under the act entitled 'An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved October 15, 1914, on account of unfair methods of competition in commerce."

It will be seen that the amendment proposed and passed by the Senate was designed to make clear the intention of

<sup>11</sup> 61 Cong. Rec., Part 1, p. 1040 (italics supplied).

<sup>12</sup> 61 Cong. Rec., Part 1, p. 1043.

that body that agricultural associations should not be freed from the penalties and restraints imposed by section 2 of the Sherman Act, which condemns monopolies or attempts to create monopolies. The fantastic interpretation placed upon H. R. 2373 by Mr. Volstead in his Committee Report thereon can be explained only by the conjecture that he feared that H. R. 2373, if given its true meaning, would again be amended by the Senate in the same manner as was H. R. 13931.

If such were Mr. Volstead's fears, they were not unfounded. There was indeed an attempt made by the Senate to amend H. R. 2373 in the same way as it had amended H. R. 13931. The amendment proposed and rejected by the Senate is quoted *supra*. This amendment and the discussion thereof in the Senate is referred to by the Government at pages 66 and 67 of its Brief. The Government alleges that the arguments urged in the Senate in favor of the amendment in question do not concern themselves with the possibility of agricultural associations entering into combinations with third persons, but consider only the possibility that such associations might by virtue of their size monopolize the market in central products. The Government's statement of the general tenor of the Senate debates is not altogether accurate; it is not true to say that the possibility of cooperatives combining with third persons was not considered by the legislators. This is revealed not only by the assertions of Senators Kellogg and Brandegee, quoted above, as well as assertions of Representative Mills, but also by the statement of Senator Walsh made in a hearing before the Subcommittee (Senators Norris, Brandegee and Walsh) of the Senate Committee on the Judiciary on S. 4344, the Senate counterpart of H. R. 2373 (hearings before the Subcommittee of the Senate Committee on the Judiciary on S. 4344, 66th Cong., 2nd Sess., p. 28):

"Senator Walsh: \* \* \* We will assume that this farm-

ers' cooperative association of milk producers is highly successful; so much so that it weakens the competition of the independent fellows; and, *catching the trust spirit they enter into a combination by which they gather into their association every other distributor of milk in the city.* After that they have a monopoly of it. Now, you do not want any legislation . . . that will authorize that kind of a combination.

"Mr. Lyman: Senator, I would answer that by saying that section 2 would absolutely take care of that.

"Senator Walsh: How would section 2 take care of it?

"Mr. Lyman: The procedure—the machinery—is laid down—of the Secretary of Agriculture—if he has reason to believe that there is such an association to restrict trade.

"Senator Walsh: Such a combination would be a monopoly.

"Mr. Lyman: It ends up in an injunction by a court.

"Senator Walsh: Yes; but let me ask you, why should a monopoly of that character be tolerated any more than any other kind of a monopoly? Why should you condemn a monopoly . . . of the production of cook stoves in a community? *Why should you say that if the dealers in hardware in a city should all combine and the whole thing be thrown into one combination that shall be unlawful, but if the competitors in marketing milk associate themselves together it shall not be unlawful?*"<sup>18</sup>

Moreover, the reason for the paucity of discussion in the Senate relative to the possibility of agricultural associations entering into combinations with third persons is plain: It was admitted by those who discussed the bill that it exempted agricultural associations from prosecutions under section 1 of the Sherman Act, the section under which the indictment against Pure Milk Association, its officers and agents, was found,—the section concerned with combinations in restraint of trade. It was natural, therefore, that the debate in the Senate should be confined to the question

<sup>18</sup> Italics supplied.

of whether or not such associations should be exempted from the provisions of section 2 of the Sherman Act,—the issue raised by the amendment proposed and above referred to. The following excerpts from the debates well illustrates the point just made.

Mr. Pomerene: How does the Senator from Montana differentiate between section 2 and section 1 of the Sherman Act? In other words, he wants to preserve the provisions of section 2 with respect to the monopolization of any part of the trade or commerce among the States. The first section, as the Senator knows, declares "every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade" to be illegal. *Is it the Senator's desire to preserve intact the provisions of section 1 of the Sherman law?*

Mr. Walsh of Montana: *No; it is my desire to get rid of it so far as farm marketing corporations are concerned.* That is the answer I made to the Senator from Oregon [Mr. McNary], who asked me what the Senate committee bill gives to the farmers that they have not now. It gives them immunity from section 1 of the Sherman Act and does not give them immunity from section 2 of that act.<sup>14</sup>

Mr. Townsend: . . . The House bill proposes that farmers may organize—I think they can do it under the law now—for the purpose of controlling markets in the sense of taking advantage of the best market possible, consistent with the good of the country. Threats of prosecutions, however, hinder them from organizing. The House bill proposes to permit proper organization. *The proponents of the amendment say that they have no objection to eliminating the possibility of section 1 of the Sherman antitrust law applying to agricultural organizations, but they lay especial emphasis on their claim that section 2 must apply to these organizations.* Why, sir, if this amendment is agreed to, then I submit that the Congress has specifically stated that even though the original intention of the makers of the Sherman antitrust law was not to cover farmers' organizations, it shall

<sup>14</sup> 62 Cong. Rec., Part 3, p. 2160 (italics supplied).

cover those organizations henceforth from the passage of this bill. It would be better to defeat the measure than pass it with this amendment.<sup>15</sup>

It is of major significance that the Senate amendment to H. R. 2373 failed of passage; this failure demonstrates that it was the intention of the Senate that agricultural associations should not be subject to prosecutions under either Section 1 or Section 2 of the Sherman antitrust law.

From the foregoing study of the legislative history of the Capper-Volstead Act, it may be concluded that if that history has any significance whatsoever so far as the interpretation of the law is concerned, it supports the position previously taken by us in this Brief.

#### CONCLUSION.

We submit that if the position taken by the Government in its brief is the proper construction to be placed upon the Clayton Act, Capper-Volstead Act, The Cooperative Marketing Act of 1926, The Agricultural Cooperative Act of Illinois, The Agricultural Adjustment Act of 1933, as amended, The Agricultural Marketing Agreement Act of June, 1937 and kindred acts relating to exemptions and privileges granted agricultural cooperative associations, then the efforts and aims of the several states, as well as the Federal Government, to devise and carry into effect a well considered plan relating to agricultural cooperative associations, would be meaningless.

And if the construction to be placed upon all of these acts is to be in accordance with the principles set forth in the Government's brief, and such associations are to be subjected to indictment without any regard to legislation enacted subsequent to the Sherman Antitrust Act, the result will be to nullify the protection extended agricul-

<sup>15</sup> 62 Cong. Rec., Part 3, p. 2216 (italics supplied).

ture by the legislatures of the separate states and by the Acts of Congress.

We respectfully pray that the judgment of the lower court be affirmed.

Respectfully submitted,

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## APPENDIX "A".

## SHERMAN ACT.

15 U. S. C. A. (1938 Supp.) § 1.

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal: *Provided*, That nothing herein contained shall render illegal, contracts or agreements prescribing minimum prices for the resale of a commodity which bears, or the label or container of which bears, the trade mark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of that description are lawful as applied to intrastate transactions, under any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia in which such resale is to be made, or to which the commodity is to be transported for such resale, and the making of such contracts or agreements shall not be an unfair method of competition under section 45 of this title, as amended and supplemented: *Provided further*, That the preceding proviso shall not make lawful any contract or agreement, providing for the establishment or maintenance of minimum resale prices on any commodity herein involved, between manufacturers, or between producers, or between wholesalers, or between brokers, or between factors, or between retailers, or between persons, firms, or corporations in competition with each other. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding \$5,000.00, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court. (As amended August 17, 1937, c. 690, Title VIII, 50 Stat. 693.)

## APPENDIX "B".

## CLAYTON ACT.

## 15 U. S. C. A. § 17.

The labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws. (Oct. 15, 1914, c. 323, § 6, 38 Stat. 731.)

## APPENDIX "C".

## CAPPER-VOLSTEAD ACT.

7 U. S. C. A. §§ 291, 292.

*An Act to authorize association of producers of agricultural products.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That persons engaged in the production of agricultural products as farmers, planters, ranchmen, dairymen, nut or fruit growers may act together in associations, corporate or otherwise, with or without capital stock, in collectively processing, preparing for market, handling, and marketing in interstate and foreign commerce, such products of persons so engaged. Such associations may have marketing agencies in common; and such associations and their members may make the necessary contracts and agreements to effect such purposes: *Provided, however,* That such associations are operated for the mutual benefit of the members thereof, as such producers, and conform to one or both of the following requirements:

First. That no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein, or,

Second. That the association does not pay dividends on stock or membership capital in excess of 8 per centum per annum.

And in any case to the following:

Third. That the association shall not deal in the products of non-members to an amount greater in value than such as are handled by it for members.

SEC. 2. That if the Secretary of Agriculture shall have reason to believe that any such association monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any agricultural product is unduly enhanced by reason thereof, he shall serve upon such association a complaint stating his charge in that respect, to which complaint shall be attached, or contained therein, a notice of hearing, specifying a day and place not less than thirty days after the service thereof, requiring the association to show cause why an order should not be made directing it to cease and desist from monopolization or restraint of trade. An association so complained of may at the time and place so fixed show cause why such order should not be entered. The evidence given on such a hearing shall be taken under such rules and regulations as the Secretary of Agriculture may prescribe, reduced to writing, and made a part of the record therein. If upon such hearing the Secretary of Agriculture shall be of the opinion that such association monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any agricultural product is unduly enhanced thereby, he shall issue and cause to be served upon the association an order reciting the facts found by him, directing such association to cease and desist from monopolization or restraint of trade. On the request of such association or if such association fails or neglects for thirty days to obey such order, the Secretary of Agriculture shall file in the district court in the judicial district in which such association has its principal place of business a certified copy of the order and of all the records in the proceeding, together with a petition asking that the order be enforced, and shall give notice to the Attorney General and to said association of such filing. Such district court shall thereupon have jurisdiction to enter a decree affirming, modifying, or setting aside said order, or enter such other decree as the court may deem

equitable, and may make rules as to pleadings and proceedings to be had in considering such order. The place of trial may, for cause or by consent of parties, be changed as in other causes.

The facts found by the Secretary of Agriculture and recited or set forth in said order shall be prima facie evidence of such facts, but either party may adduce additional evidence. The Department of Justice shall have charge of the enforcement of such order. After the order is so filed in such district court and while pending for review therein the court may issue a temporary writ of injunction forbidding such association from violating such order or any part thereof. The court may, upon conclusion of its hearing, enforce its decree by a permanent injunction or other appropriate remedy. Service of such complaint and of all notices may be made upon such association by service upon any officer or agent thereof engaged in carrying on its business, or on any attorney authorized to appear in such proceeding for such association, and such service shall be binding upon such association, the officers, and members thereof.

Approved, February 18, 1922. (42 Stat. 388.)

## APPENDIX "D".

## COOPERATIVE MARKETING ACT.

## 7 U. S. C. A. § 455.

Persons engaged, as original producers of agricultural products, such as farmers, planters, ranchmen, dairymen, nut or fruit growers, acting together in associations, corporate or otherwise, in collectively processing, preparing for market, handling, and marketing in interstate and/or foreign commerce such products of persons so engaged, may acquire, exchange, interpret, and disseminate past, present; and prospective crop, market, statistical, economic, and other similar information by direct exchange between such persons, and/or such associations or federations thereof, and/or by and through a common agent created or selected by them. (July 2, 1926, c. 725, § 5, 44 Stat. 803.)

## APPENDIX "E".

## AGRICULTURAL MARKETING ACT.

## 12 U. S. C. A. § 1141.

(a) It is hereby declared to be the policy of Congress to promote the effective merchandising of agricultural commodities in interstate and foreign commerce, so that the industry of agriculture will be placed on a basis of economic equality with other industries, and to that end to protect, control, and stabilize the currents of interstate and foreign commerce in the marketing of agricultural commodities and their food products—

- (1) by minimizing speculation.
- (2) by preventing inefficient and wasteful methods of distribution.
- (3) by encouraging the organization of producers into effective associations or corporations under their own control for greater unity of effort in marketing and by promoting the establishment and financing of a farm marketing system of producer-owned and producer-controlled cooperative associations and other agencies.
- (4) by aiding in preventing and controlling surpluses in any agricultural commodity, through orderly production and distribution, so as to maintain advantageous domestic markets and prevent such surpluses from causing undue and excessive fluctuations or depressions in prices for the commodity.

(b) There shall be considered as a surplus for the purposes of this subchapter any seasonal or year's total surplus, produced in the United States and either local or national in extent, that is in excess of the requirements for the orderly distribution of the agricultural commodity

or is in excess of the domestic requirements for such commodity.

(c) The Farm Credit Administration shall execute the powers vested in it by this subchapter only in such manner as will, in the judgment of the administration, aid to the fullest practicable extent in carrying out the policy above declared. (June 15, 1929, c. 24, § 1, 46 Stat. 11; Mar. 27, 1933, Ex. Or. 6084.)

## APPENDIX "F".

## AGRICULTURAL ADJUSTMENT ACT OF 1933.

## 7 U. S. C. A. §§ 601, 602.

[SECTION 1] It is hereby declared that the disruption of the orderly exchange of commodities in interstate commerce impairs the purchasing power of farmers and destroys the value of agricultural assets which support the national credit structure and that these conditions affect transactions in agricultural commodities with a national public interest, and burden and obstruct the normal channels of interstate commerce. (May 12, 1933 c. 25, Title 1, § 1, 48 Stat. 31, as amended June 3, 1937, c. 296, §§ 1, 2 (a), 50 Stat. 246.)

[SECTION 2] It is hereby declared to be the policy of Congress—

(1) Through the exercise of the powers conferred upon the Secretary of Agriculture under this chapter, to establish and maintain such orderly marketing conditions for agricultural commodities in interstate commerce as will establish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period. The base period in the case of all agricultural commodities except tobacco and potatoes shall be the prewar period, August, 1909—July, 1914. In the case of tobacco and potatoes, the base period shall be the postwar period, August, 1919—July, 1929; and, in the case of all commodities for which the base period is the pre-war period, August 1909 to July 1914, will also reflect current interest pay-

ments per acre on farm indebtedness secured by real estate and tax payments per acre on farm real estate, as contrasted with such interest payments and tax payments during the base period. (As amended June 3, 1937, c. 296, §§ 1, 2 (b), 50 Stat. 246, 247.)

(2) To protect the interest of the consumer by (a) approaching the level of prices which it is declared to be the policy of Congress to establish in subsection (1) of this section by gradual correction of the current level at as rapid a rate as the Secretary of Agriculture deems to be in the public interest and feasible in view of the current consumptive demand in domestic and foreign markets, and (b) authorizing no action under this title which has for its purpose the maintenance of prices to farmers above the level which it is declared to be the policy of Congress to establish in subsection (1) of this section. (May 12, 1933, c. 25, Title I, § 2, 48 Stat. 32, as amended August 24, 1935, c. 641, §§ 1, 62, 49 Stat. 750, 782; June 3, 1937, c. 296, §§ 1, 2 (b), 50 Stat. 246, 247.)

## APPENDIX "G".

## AGRICULTURAL MARKETING AGREEMENT ACT OF 1937.

7 U. S. C. A. § 608c.

(SEE ALSO APPENDIX "F".)

(1) The Secretary of Agriculture shall, subject to the provisions of this section, issue, and from time to time amend orders applicable to processors, associations of producers, and others engaged in the handling of any agricultural commodity or product thereof specified in subsection (2) of this section. Such persons are referred to in this chapter as "handlers." Such orders shall regulate, in the manner hereinafter in this section provided, only such handling of such agricultural commodity, or product thereof, as is in the current of interstate or foreign commerce, or which directly burdens, obstructs, or affects, interstate or foreign commerce in such commodity or product thereof.

(5) In the case of milk and its products, orders issued pursuant to this section shall contain one or more of the following terms and conditions, and (except as provided in subsection (7) no others:

(A) Classifying milk in accordance with the form in which or the purpose for which it is used, and fixing, or providing a method for fixing, minimum prices for each such use classification which all handlers shall pay, and the time when payments shall be made, for milk purchased from producers or associations of producers. Such prices shall be uniform as to all handlers, subject only to adjustments for (1) volume, market, and production differentials

customarily applied by the handlers subject to such order, (2) the grade or quality of the milk purchased, and (3) the locations at which delivery of such milk, or any use classification thereof, is made to such handlers.

(B) Providing:

(i) for the payment to all producers and associations of producers delivering milk to the same handler of uniform prices for all milk delivered by them: *Provided*, That, except in the case of orders covering milk products only, such provision is approved or favored by at least three-fourths of the producers who, during a representative period determined by the Secretary of Agriculture, have been engaged in the production for market of milk covered in such order or by producers who, during such representative period, have produced at least three-fourths of the volume of such milk produced for market during such period; the approval required hereunder shall be separate and apart from any other approval or disapproval provided for by this section; or

(ii) for the payment to all producers and associations of producers delivering milk to all handlers of uniform prices for all milk so delivered, irrespective of the uses made of such milk by the individual handler to whom it is delivered; subject, in either case, only to adjustments for (a) volume, market, and production differentials customarily applied by the handlers subject to such order, (b) the grade or quality of the milk delivered, (c) the locations at which delivery of such milk is made, and (d) a further adjustment, equitably to apportion the total value of the milk purchased by any handler, or by all handlers, among producers and associations of producers, on the basis of their marketings of milk during a representative period of time. (As amended June 3, 1937, c. 296, §§ 1, 2 (d), 50 Stat. 246, 247.)

(C) In order to accomplish the purposes set forth in paragraphs (A) and (B) of this subsection (5), providing a method for making adjustments in payments, as among handlers, (including producers who are also handlers), to the end that the total sums paid by each handler shall equal the value of the milk purchased by him at the prices fixed in accordance with paragraph (A) hereof.

(D) Providing that, in the case of all milk purchased by handlers from any producer who did not regularly sell milk during a period of 30 days next preceding the effective date of such order for consumption in the area covered thereby, payments to such producer, for the period beginning with the first regular delivery by such producer and continuing until the end of two full calendar months following the first day of the next succeeding calendar month, shall be made at the price for the lowest use classification specified in such order, subject to the adjustments specified in paragraph (B) of this subsection (5).

(E) Providing (i) except as to producers for whom such services are being rendered by a cooperative marketing association, qualified as provided in paragraph (F) of this subsection (5), for market information to producers and for the verification of weights, sampling, and testing of milk purchased from producers, and for making appropriate deductions therefor from payments to producers, and (ii) for assurance of, and security for, the payment by handlers for milk purchased.

(F) Nothing contained in this subsection (5) is intended or shall be construed to prevent a cooperative marketing association qualified under the provisions of sections 451 to 457 of this title, known as the "Capper-Volstead Act", engaged in making collective sales or marketing of milk or its products for the producers thereof, from blending the net proceeds of all of its sales in all

markets in all use classifications, and making distribution thereof to its producers in accordance with the contract between the association and its producers: *Provided*, That it shall not sell milk or its products to any handler for use or consumption in any market at prices less than the prices fixed pursuant to paragraph (A) of this subsection (5) for such milk.

(G) No marketing agreement or order applicable to milk and its products in any marketing area shall prohibit or in any manner limit, in the case of the products of milk, the marketing in that area of any milk or product thereof produced in any production area in the United States.

(18) The Secretary of Agriculture, prior to prescribing any term in any marketing agreement or order, or amendment thereto, relating to milk or its products, if such term is to fix minimum prices to be paid to producers or associations of producers, or prior to modifying the price fixed in any such term, shall ascertain, in accordance with section 602 and section 608e of this title, the prices that will give such commodities a purchasing power equivalent to their purchasing power during the base period. The level of prices which it is declared to be the policy of Congress to establish in section 602 and section 608e of this title shall, for the purposes of such agreement, order, or amendment, be such level as will reflect the price of feeds, the available supplies of feeds, and other economic conditions which affect market supply and demand, for milk or its products in the marketing area to which the contemplated marketing agreement, order, or amendment relates. Whenever the Secretary finds, upon the basis of the evidence adduced at the hearing required by section 608b of this title or this section, as the case may be, that the prices that will give such commodities a purchasing power equivalent to their purchasing power during the base period as determined

pursuant to section 602 and section 608e of this title are not reasonable in view of the price of feeds, the available supplies of feeds, and other economic conditions which affect market supply and demand for milk and its products in the marketing area to which the contemplated agreement, order, or amendment relates, he shall fix such prices as he finds will reflect such factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest. Thereafter, as the Secretary finds necessary on account of changed circumstances, he shall, after due notice and opportunity for hearing, make adjustments in such prices. (As added June 3, 1937, c. 296, § 2 (f), 50 Stat. 246, 247.)

## APPENDIX "H".

## ROBINSON-PATMAN ACT (PRICE DISCRIMINATION).

15 U. S. C. A. (Supp., 1938) § 13a.

It shall be unlawful for any person engaged in commerce, in the course of such commerce, to be a party to, or assist in, any transaction of sale, or contract to sell, which discriminates to his knowledge against competitors of the purchaser, in that, any discount, rebate, allowance, or advertising service charge is granted to the purchaser over and above any discount, rebate, allowance, or advertising service charge available at the time of such transaction to said competitors in respect of a sale of goods of like grade, quality, and quantity; to sell, or contract to sell, goods in any part of the United States at prices lower than those exacted by said person elsewhere in the United States for the purpose of destroying competition, or eliminating a competitor in such part of the United States; or, to sell, or contract to sell, goods at unreasonably low prices for the purpose of destroying competition or eliminating a competitor.

Any person violating any of the provisions of this section shall, upon conviction thereof, be fined not more than \$5,000.00 or imprisoned not more than one year, or both, (June 19, 1936, c. 592, § 3, 49 Stat. 1528.)